the Freeman

Ideas on Liberty

JULY 1984

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JOHN C. SPARKS

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The new president, a former corporation executive, has been affiliated with the Foundation since 1949. He has been a FEE trustee since 1967 and served as chairman of the board from 1976 through 1979. He has contributed more than forty articles to *The Freeman,* two of which were later reprinted in *The Reader's Digest.*

Sparks' career in corporate finance included positions with The Glidden Company and U.S. Ceramic Tile. For the last seventeen years he served as vice president of finance and treasurer for the GF Corporation, Youngstown, Ohio.

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Don't Overdo It

As RESTRICTIONS and prohibitions are multiplied in the Empire, the people grow poorer and poorer. When the people are subjected to overmuch government, the land is thrown into confusion. When the people are skilled in many cunning arts, strange are the objects of luxury that appear. The greater the number of laws and enactments, the more thieves and robbers there will be. Therefore, the Sage says: "So long as I do nothing, the people will work out their own reformation. So long as I love calm, the people will right themselves. If only I keep from meddling, the people will grow rich. If only I am free from desire, the people will come naturally back to simplicity." If the Government is sluggish and tolerant, the people will be honest and free from guile. If the Government is prying and meddling, there will be constant infraction of the law. Is the Government corrupt? Then uprightness becomes rare, and goodness becomes strange.

Verily, mankind have been under delusion for many a day! Govern a great nation as you would cook a small fish. (Don't overdo it.)

—Lao-Tze, 560 B.C.

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Clarence B. Carson

The Collectivist Fallacy

A CLASS to which I belong is either going or has gone out of existence. If the class had a formal title, I never heard it, but it could be described this way. It was comprised of those who suffered property damage as the result of a brief voltage reduction which occurred in the early morning hours on a certain day in April of 1983. It was a local phenomenon, restricted mostly to a portion of the county in which I live.

Here is how I came to be a member of this particular group or class. My older daughter awakened the household around 5:30 of the said early morning with the announcement that we had a power "brownout." I got up to check, and sure enough the lights were dim, and there were indications that the situation was general. My first thought was that we should turn off the heat pump lest it be damaged. That done, my daughter called the electric company. The person who answered the phone said that they were aware of the condition and were working to correct it. Within 30 or 40 minutes, the power came up to full voltage, and that should have been that. Except, it wasn't.

Our refrigerator began to develop strange clicking noises, and my amateur investigation disclosed that while the air was circulating through it, it was cool air, not cold. Moreover, the air soon developed that unmistakable fetid odor characteristic of refrigerators when they are not refrigerating. There was nothing for it but to get help from some person familiar with the innards of refrigerating devices. Late in the afternoon, the service man arrived to check the refrigerator. His findings were not encouraging. The compressor had locked, he declared.

Dr. Carson specializes in American intellectual history. He has written a number of books, including *Organized Against Whom? The Labor Union in America*, and *The Colonial Experience*, the first in a 5-volume series, A Basic History of the United States.

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Well, I asked, what do you have to do to unlock it? You don't, he replied, you replace the compressor. So, he carted off the refrigerator to the repair shop, and several days later it was returned and worked as well as before.

My pocketbook was lightened of its burden by some $250 to pay for the restoration, of course. Evidence began to accumulate that there was a connection between the power reduction and compressor failures. Mine was no isolated case. The refrigerator business I had used was kept busy for weeks repairing and replacing refrigerators, food freezers, and the like. The man who owned the business had got up at about the time the brownout occurred, investigated, and discovered that the voltage was exactly one-half normal strength. He recommended to his customers that they seek relief from the power company. I filed a written claim; some of the others went in person to assert their claims.

The efforts were to no avail; I never received a reply to my letter, but I heard that the power company was denying its responsibility. Spokesmen for the company talked vaguely about acts of God and other mishaps beyond their control. If the Deity actually acts by way of the wind and weather, He was especially quiet on the night in question. The wind was calm; it was clear; not a single bolt of lightning had been seen nor clap of thunder heard. My insurance man explained that if the voltage reduction had been the result of an act of God, the insurance companies would pay the claims.

Loath as I am to take collective action, I had just about worked myself into a sufficient lather to instigate a class action suit, when I got a call one night from a man who lives in a nearby community. He said an attorney had been found who would undertake such a suit for a portion of the proceeds and asked if I wanted to make a claim. I assured him that I did and told him the amount of my claim.

Many months went by without any word of proceedings or lawsuit before there came another call from the man who had contacted me in the first place. He said that the power company was going to pay the claims and that to get mine I would have to go by the attorney's office and make a formal statement of mine. The next time I was in the vicinity of the lawyer's office I went by, filled in the amount of the claim, and signed the paper. More weeks or months elapsed before I got a call from a local lawyer who must have been associated in the case some way. He said he had a check for me, and I could come by and pick it up or he would mail it to me. I picked up the check, was satisfied with the amount, and my membership in the

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class which had brought (or threatened) the suit was at an end.

These rather trivial incidents probably have no particular significance in themselves. I have related them in some detail, however, because of the light they may shed upon collectivism and what I believe to be the central collectivist fallacy. But before applying them in that way, some observations about collectivism and what I conceive to be the collectivist fallacy are in order.

First, some observations about collectivism. I take it that the main thrust for change in the way we do things in America over the past half century has been collectivism. That is, it has come from what I once called, a "collectivist curvature of the mind," the bent to organize and solve problems collectively rather than to do so individually. This bent has been expressed forcefully by the increasing use of government to manage and control the lives and activities of people.

This governmental control is also sometimes described as socialism and the tendency in that direction socialistic. But collectivism is much the better word for describing and thinking about the method of the action; it does not have to be encumbered with the intellectual baggage of ideological socialism. Socialism, after all, may be nothing more than a figment of the fertile imaginations of intellectuals. Collectivism, on the other hand, is quite real. It is as real as all the governmentally organized or supported organizations which rule today in so many areas of our lives: as real as the Department of Agriculture, of Health and Human Services, the Federal Reserve Board, the Securities and Exchange Commission, the AFL-CIO, the AEA, the Food and Drug Administration, and so on and on.

A Preference for Collective Action

Collectivism can be defined as the *preference* for the collective over the individual. In practice, it is the preference for government-directed action over private, individual, and independent ways of doing things. It is the preference for collective over individual responsibility, for government-guaranteed security over free enterprise, for control over liberty. The collective acts through government, according to the dominant contemporary democratic theories. The electorate votes and, by so doing, grants its support to the collectivizing activities of government.

Undergirding this thrust to collectivism is the view not only that collective action is preferable to that of individuals but also a conception of the nature of man that mandates collectivism as the solution to our problems. Man is a part rather than a whole, an incomplete being on his own, inadequate to the task of life. The individual following his own

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way is sundered from the organism of which he is a part.

This aspect of collectivism, which I consider central to it, was brought home to me recently by correspondence which I had with a reader of one of my books. In *Organized Against Whom?* I quoted from the decision of a New York court in 1835 in the case of *The People v. Fisher.* The judge ruled that combinations of men, as in a labor union, had no right to set the prices at which others might sell their goods or labor. He reasoned that "If one individual does not possess such a right over the conduct of another, no number of individuals can possess such a right."

My reader indicated "that while the court reasoned fallaciously in my opinion, its conclusion was correct." The example the "court cited did not 'logically' support its conclusion." More specifically, he claims that in the sentence from the court quoted above the court was guilty of "the fallacy of composition." The fallacy of composition, he explains, "occurs when one reasons fallaciously from the attributes of the parts of a whole to the attributes of the whole itself." Thus, "Regarding *The People vs. Fisher,* the court reasoned from the attributes of the parts of a whole (i.e., individual members of a union) to attributes of the whole itself (i.e., the union). I submit that this was fallacious reasoning."

Parts and Wholes

On the contrary, I think that the judge not only reached a sound conclusion but also reasoned correctly on his way to it. I doubt very much that he was guilty of a fallacy of composition, but it is entirely possible that my correspondent has, perhaps unwittingly, fallen under the sway of what I am here calling the fallacy of collectivism. In any case, the difficulty, and the difference, is ontological, not logical. That is, it has to do with the nature and character of being, not with some weakness in reasoning conclusions from his premises.

Given his premises, so far as I understand them, the judge was rigorously logical in arriving at his conclusion. Here is a recap of his reasoning as I understand it. If a union has the right to impose its will upon others it must have obtained the right either from its members or from other sources. He had surveyed the state law on the subject and found in it no authority for such union activity. In the absence of positive law to the contrary, he looked for the right in the only place it could reside, in the rights of individuals. On his showing, individuals had no right to set prices for others. Therefore, he concluded that no number of individuals by combining could confer on an organization rights which they did not themselves possess.

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The question with which my reader is dealing goes beyond the logical; it is, as I said, ontological. It has to be answered in the realm of being. Are men partial *beings*? And, are labor unions, and other organizations, whole *beings*? If we answer these two questions in the affirmative, the judge might indeed have made the fallacy of composition, but it would still be only a formality as my reader suggests, since we would still be missing a source for the alleged rights of the union. But there is much more than a mere formality involved in affirming that men are partial beings and that groups, classes, and organizations are whole beings. That is to affirm the basic premise of collectivism. That is to commit the fallacy of collectivism, i.e., to hold that individuals are but partial beings who attain such fruition as they do in wholeness as parts of groups, classes, or other organizations.

Groups and Organizations Tend to Be Temporary Arrangements

It seems to me that the bulk of the evidence points in the opposite direction from the collectivist position. That is, it points toward the conclusion that man is the whole being and that organizations can at most only simulate the wholeness of a man. Groups and organizations are by their nature usually temporary, ephemeral, occasional, and short-time arrangements. Ordinarily, the people who are thought of as members or belonging to them commit only a portion of themselves to the group.

With these things in mind, let us return to an examination of the opening account of my membership, if it should be called that, in the class of persons who suffered property damage due to a voltage reduction in the electricity. Clearly, this was a temporary class or group of people, arising from the occasion of property damage from a common source. Many of the people in the class did not, and do not, know one another. The only person belonging to it that I know is my mail carrier. No general meeting of members was ever called or held, no social functions, rallies, or other gatherings. It lasted less than a year, and it is difficult to imagine circumstances under which the class or group would ever come back into being. None of us gave much of ourselves to the class; even the lawyer who was appointed to present our claims probably gave no more than a few hours to the task over a period of six or eight months. Obviously, the class was ephemeral and, by comparison with the solidity and relative permanence of the individual person, of little account.

Granted, as organizations go, this example was not very impressive. Even so, it is appropriate, because it

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exemplifies the essence and nature of organizations more vividly than do complex and more enduring ones. Its singularity of purpose, its limited claim on the involvement of members, and its short duration highlight the essence of groups. Groups vary, of course, from the shifting groups at a social gathering, which form for only a few moments and whose members may be linked only in the most casual way by some circumstance to those that may exercise some claim for the whole of one's life, such as being members of a family. But all share a common trait of dependence upon the loyalty and involvement of individual members. Even the law is a slender thread when it prescribes or compels membership.

Distinctive Individuals

Although we speak of being members of or belonging to groups, the language is more figurative than literal. People are not members of groups in the sense that an arm or leg is a member or part of a body. An arm or a leg severed from a body no longer has significant existence; it is no longer even a part of a whole. A severed leg can no longer walk, nor an arm perform its function. They are neither whole nor parts of a whole, and the body from which they have been severed is no longer physically whole.

None of this is literally true of the relationship of members to organizations. A man who withdraws from an organization is still a whole being literally, as whole as he was within the organization. He is separable from and retains his full being without "belonging" to any organization. He may, of course, feel a sense of psychic or spiritual loss, but, then again, the act could fill him with a sense of his wholeness which he had lost sight of in the organization. In any case, these are moods, which are most noted for being transient and ephemeral, having little to do with the state of being of creatures.

The wholeness of a normal human who achieved anything in the vicinity of his potential evinces itself in numerous integrated and independent acts. Man is self-starting, can originate acts of his own, is largely self-contained, is mobile and separable from other beings. He can walk, talk, sing, whistle, draw, write, calculate, bend, stand erect, flex his muscles, listen, smell, taste, produce, build, and operate things. It is true that he requires sustenance from outside himself from time to time. He must breathe, drink, and eat, and he may require other aids to survival, such as warmth and shelter, from time to time. But these needs do not so much detract from his wholeness as a being as provide challenges to his energy and ingenuity in providing

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them which tend to fulfill his potentiality.

None of this is intended to denigrate associations, groups, or organizations as such. They are often valuable, beneficial, and sometimes essential adjuncts to man. An infant cannot ordinarily survive for long without aid from adults. Man is a sociable being and often gets pleasure from the company of others. Even grown persons often need the help of others. All of us benefit from the division of labor, some of which is most effective when it is organized. Nor is it my intention to suggest that all social relationships are simply for the convenience of the individual and dissolvable at will. On the contrary, such associations as those involved in marriage and family, citizenship, and church membership may be of an enduring character and are certainly fraught with greater significance than some casual grouping.

Groups Are Lesser Beings

In any case, my purpose is not to unknit the bonds of society but to put in ontological perspective the difference between individual persons and associations. The distinction I am making is this. Individual persons are a higher order of being than groups, classes, and organizations. They are potentially complete, as beings, on their own, separable and independent. Groups are lesser beings, dependent upon the wills of individuals, and contingent in character. Far from man having existence as part of some organization; groups have their existence from some (usually) partial attachment of men to them.

Collectivism attempts to reverse this order of being, to stand it on its head, so to speak. It accords a superior reality to classes and tends to view men as extensions of them. Such notions might be of concern mainly to philosophers and grist for the debates of sophists except for one overweening consideration. Collectivists are hardly content with merely asserting their perverse views or practicing them in voluntary organizations. They have long since thrust to bring others under the power of this idea by empowering groups. Indeed, the very idea—the collectivist fallacy—is so contrary to reality that any general adherence to it is possible only by using government power to maintain it.

These aspects of collectivism can be seen most clearly, perhaps, in Marxism. There should be no doubt that Marx attributed a superior reality of classes to that of individuals. According to his scheme, the class to which one belongs determines his ideas, beliefs, the content of the laws, and whether he can prosper or fail. Even his religion is foisted upon him by the ruling class

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for class purposes. Thus, the individual man is in his being simply an extension of the class to which he belongs.

Marx envisioned a series of coming revolutions in which the power of class would finally be broken, and man would be freed from the hold of class in a classless society. But the instrument that would bring all this about was to be the proletariat class when it would seize power. Marxism in power—Communism—creates a facade of rule by the proletariat by proclaiming the empowerment of the workers. In practice, Communists establish tyrannical dictatorships because the alleged working class does not possess the solidity required for revolutionary purposes. No class does or can; that is the collectivist fallacy that they could or do possess such solidity. One-man rule is a reflex of the collectivist fallacy.

But all collectivists are more or less under the sway of the collectivist fallacy that the collective is of a superior reality to that of individuals. Generally, too, collectivists attribute moral superiority to some one or more of their choice collectives. They are the groups or classes which are supposed to find special favor with government and to be empowered by it. Usually, it is some class or classes which are alleged to have been wronged in times past. Their having been wronged is supposed somehow to have purified them and made them superior. For the communists, it is the working class or proletariat. For the Nazis, it was the German race. For laborites, it is industrial workers organized into unions. For democratic socialists, it may be described as "the people," by which we may understand the poor people, the working people, the minorities, and so on. Indeed, any classification of people that can work up into an historical wrong some real or imagined grievance can at least lay claim to empowerment by the government dominated by the collectivist fallacy.

In my opinion, the court did not err in the case of *The People v. Fisher,* because it considered each individual as a whole. And, when wholes are added one to another, there has only been an increase in quantity, not a change in quality. If, as the judge said, one individual does not have the right to use force on another to make him observe some set price, then neither does a group of individuals. A group is not superior to an individual in either being or right. Granted, a group acting in a concerted fashion may intimidate or overpower individuals on their own. But that does not make them right unless might makes right. In the upside down world of collectivism, of course, might is believed to make right. That is the grotesque reality toward which the collectivist fallacy points.

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Ian Ravenscroft

DANGER: A Lesson from Language

dān'-ger: n. Liability or exposure to harm, risk, or peril. [Earlier sense *power* from Old French *dangier*, from Latin *dominus*, lord.]
—*The Concise Oxford Dictionary*

SOCIAL SCIENTISTS are concerned with explaining the regularities and patterns that occur in the tapestry of human events. Physicists and chemists also look for patterns and regularities, but unlike the social scientist, the natural scientist is concerned with molecules and magnetism, electrons and elements, not social structures.

The social scientist can also be distinguished from the psychologist because the latter observes the behavioral patterns of an individual, while the former studies regularities for which no individual is solely responsible. Indeed, the regularities which interest the social scientist arise from the interaction of countless men and women.

The social patterns which arise unintended from the behavior of millions of individuals have been described by F.A. Hayek as constituting a "spontaneous order." Language is a prime example of spontaneous order. It is not the work of any one individual. Nobody invented language, and no one controls its destiny. Language, in all its complexity, arose from the social interaction of individuals creating a pattern of sound and meaning. To quote Professor Hayek, "language shows a definite order which is not the result of any conscious design."[1]

Just as language arose without conscious intent, so may it change without individual decision. Such alterations can reflect changing attitudes within the speech community, and so etymology may give us a clue to the discoveries and intuitions of numberless individuals over the centuries. The etymology of the word "danger" provides such a hint.

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Today, the word "danger" refers to risk or peril. But this has not always been so. A thousand years ago, "danger" meant "power." The word crept into English from the Old French "dangier." In its turn, Old French acquired "dangier" from the Latin "dominus," meaning lord or ruler. Thus, there is a chain of sound and semantics from ruler to power to danger.

The metamorphosis of "ruler" to "danger" is a telling one. It tells us that over the centuries people have realized that rulers and power are dangerous, and it tells us that today we must be vigilant of our lords. Danger emanates from rulers and creeps down the corridors of power.

I have selected three dangers which confront us today. Other pressing dangers could be cited, but those I have chosen are familiar and so underline my thesis clearly.

Economic Disorder

One major danger of the 1980s is economic disorder. We are beset by unyielding deficits, massive unemployment, falling savings, and low investment. The statist spells of the Washington magicians have failed to exorcize these ills. This is hardly surprising as government is the devil, not the holy water.

Language is one example of spontaneous order. The market is another. In the market, the self-interested individual sets out to earn a profit by administering to the needs of others. Unintentionally, the search for profit creates a pattern of employment and productivity.

Just as language is not the result of conscious decision, neither is the market. No one individual can claim responsibility for the pattern of prosperity which the market generates. Even armed with the most powerful computer, no ruler could coordinate the means and ends of the countless individuals who make up the economy. There is too much information dispersed in too many individuals' minds for any political group to master. To compound the matter, needs and desires, techniques and methods, are always changing. Ours is a dynamic world.

Only the market, with its entrepreneurs driven by hope of profit and fear of loss, can cope with the vast quantities of information dispersed throughout the economy. Subtle changes in price convey facts about availability and desirability between consumers and producers. But governments insist on interfering with the market. They arrogantly claim to have access to the minds of millions of people, and enforce their values upon us all.

The consequences of this presumptuous meddling are all about

[1]F. A. Hayek, *The Counter-Revolution of Science*, 2nd ed. (Indianapolis: Liberty Press, 1979), p. 69

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us—idle resources and broken dreams.

War

A second obvious danger that faces us in the latter part of the twentieth century is war—be it nuclear or conventional. There is bloodshed in Central America, Africa, the Middle East, and Afghanistan. There is mounting tension between the major powers, and distrust among the minor ones.

Let us make it clear once and for all: individuals do not wage war—States do. As Proudhon noted: "War is the health of the State." Wars are unleashed by rulers and arise from the abuse of power. But this is not to question that governments should raise armies. I am not advocating unilateral disarmament. Far from it. The sole legitimate function of government is to protect the individual from force, theft, and fraud. Armed forces are necessary if the individual is to be defended from aggression by foreign powers. But the key term is "defended." Armies must be defensive, not aggressive.

Unfortunately, rulers tend to be covetous of others' property, be it within their territory, or beyond their borders. The danger of war tends to wax as individual rights wane. Hence, to no small extent, citizens can protect their safety, not by advocating interference with other States that are potentially aggressive, but by concerning themselves with their own government's activities. Safety is maximized by individuals insisting on their government maintaining a defensive posture, and being able to back that posture with force. Ironically, peace comes out of the barrel of a gun.

The Growth of Crime

The final danger I will mention is the danger inherent in the growth of crime. Many crimes—the so-called "victimless" ones—aren't crimes at all. They are merely unusual forms of behavior which happen to be illegal. An activity can only be accurately described as criminal if it interferes with an individual's right to dispose of his or her property as that person sees fit. Hence, fraud, theft, robbery, assault, rape, and murder are all clearly crimes. They all involve one individual or group of individuals transgressing against another individual or group of individuals.

Such activities as prostitution, the sale and use of drugs, and gambling, are not crimes. They are often socially unacceptable, and almost invariably illegal, but they interfere with no one other than those people who freely agree to be involved. One may not personally approve of these activities, but one must—if one is to remain civilized—approve of the right to be involved by those who see fit.

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The danger that faces us stems not from an increase in victimless crimes, but from an upsurge in crimes of violence against others. The State is failing everywhere to prevent the rise in these activities. I suggest that there are two reasons for this. First, the State has lost its will to protect the individual. The ideology of the State is increasingly couched, not in terms of the individual, but in terms of abstractions such as "class" and "society." Thus, the energy of the State is not directed toward real individuals' problems, but toward such non-issues as the "class struggle" and "social justice."

Secondly, what energy the State does apportion to crime prevention and detection is largely spent on harassing the non-criminals mentioned earlier: prostitutes, drug addicts, and back yard gamblers. If this energy were directed toward the prevention of real crimes, our streets and homes would be safer.

This short survey of the dangers we face today is, I think, sufficient to support the link between rulers, power, and danger which etymology suggested. We are confronted by dangers that are due either to rulers exercising their power in illegitimate domains, or due to rulers failing to exercise their power in the only legitimate direction: defense of the individual.

We need to reaffirm just what the State ought and ought not be doing. And we need to do this in terms of the rights of the individual—the inalienable rights to Life, Liberty, and the pursuit of Happiness.

IDEAS ON LIBERTY

The Role of Government

In the free society government keeps the peace, protects private property, and enforces contracts. Government must do these things effectively, and it must do nothing else; otherwise, the conditions absolutely necessary to genuine personal freedom in society are absent. Whether or not a genuinely free society is attainable no mortal man can know; the limits of our knowledge are too narrow. But one thing we do know: that until at least the advocates of the free society are fully aware of the conditions necessary to its existence, it can never come about. For they must ever be on guard against new movements, ideas, and principles which would endanger its realization. And on the other hand, they must be sharply aware of existing impediments so that they may direct their energies intelligently to the removal of the causes of current imperfections.

SYLVESTER PETRO

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Hans F. Sennholz

CONCESSIONS and GIVEBACKS

WHEN AFL-CIO officials meet they pass resolutions, hold press conferences, listen to speeches by political hopefuls, and condemn the administration. They give ringing endorsement to higher minimum wages, any and all jobs bills, more "dislocated" workers and youth programs, accelerated public works, public housing construction and rehabilitation, and the like. They call for Federal spending that is many times the amount spendthrift administrations could actually spend.

In their public pronouncements, labor leaders are as forceful and intransigent as ever. But in their contract bargaining with employers many are settling for smaller pay raises than at any other time in recent years. Some even consent to givebacks, that is, voluntary forfeitures of previously won benefits. Even in the citadels of unionism, the steel and auto industries, unions for the first time in history have agreed to reductions in hourly wages and fringe benefits. What may be even more significant, some unions are acquiescing in concessions on working conditions. A leading business journal called it a "quiet revolution in the nation's industrial sector, as labor and management agree to eliminate many long-standing and costly work rules in an effort to raise productivity and profits."[1]

Revolutions of any kind are the work of ideas and principles, and are achieved in the realm of thought before they are translated into action. A revolution of unionism must be visible first of all in the sphere of thought about unions, in publications and public pronouncements, in newspapers, journals, and books.

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The leading textbooks in schools and colleges would have to revolt against popular notions about unions, and overthrow old suppositions. In particular, they would have to explode the prevalent notion that unions can improve the income and working conditions of their members without inflicting serious harm on other workers. They would have to show how union tactics and policies cause mass unemployment, especially among young workers and racial minorities, and inflict harm on the public, which consists largely of fellow workers. Short of such a revolution of thought it is difficult to fathom a revolution in labor union action and policy.

Tactical Retreats

Concessions and givebacks are alien concepts in the ideology of unionism. If it is true that labor is handicapped in its bargaining position, or even exploited by greedy employers, concessions and givebacks can only aggravate the situation; they are regrettable steps back in the long struggle against capitalistic oppression. Faithful unionists, therefore, treat them as tactical retreats that provide opportunities for regrouping and preparation for future counterattacks.

There have been very few retreats in recent decades. Governments throughout the nonsocialistic world lend strength and support to the union movement. Governments and unions are allies in interventionism the essence of which is the seizure and consumption of wealth. As it is the economic objective of both to take from people with higher incomes and give to those who have less, they act like teammates in a game of give-and-take. Labor unions deliver political votes to administrations that promise to be friendly and cooperative; the administrations in return create legal privileges and immunities for labor unions so that they may be more effective in their economic struggle. The U.S. government even took labor disputes out of the courts of law and placed such matters with a new Federal agency, the National Labor Relations Board.[2] It set the stage for unions to seize income and wealth from employers, consume productive capital, and cause goods prices to rise. It set unions free to strike against the rest of the people.

Despite all their legal advantages, labor unions may founder on the rock of reality. There are natural limits to the wealth that can be seized and distributed; there are margins beyond which the disastrous consequences of unionism can no longer be denied. There are limits to misinterpretation that would lay the blame for mass unemployment in unionized industries on witless and greedy employers or hapless foreign labor. Having

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reached the limits set by inexorable economic law, unions are forced to beat a retreat in the form of concessions and givebacks.

Depressions Are Lethal to Unions

Throughout union history nothing has been more damaging to the movement than economic depressions. They clearly reveal to anyone willing to see that labor unions cannot raise the wage rates of all workers seeking employment. During economic booms when prices are rising and wage rates are increasing, union agents are quick to take credit for the raises. They increase in prominence until a severe business depression causes prices to fall, wage rates to be cut, and unemployment to soar. They lose credibility when members lose their jobs. Before the days of generous unemployment compensation, chronic unemployment caused union members to desert their organizations in order to find work at market rates under market conditions. Labor unions foundered on the rock of economic depression.

To many Americans the 1981–1982 recession looked like a dreaded depression. By November and December 1982, unemployment kept more than 10.8 percent of workers idle. An estimated 11,987,000 Americans were jobless, which was the most since 1940. Another 6.6 million were reduced to part-time work, and 1.6 million were no longer looking for work. In 1982, more than 2.5 million workers exhausted their unemployment compensation.[3]

The economic recession was felt most keenly in the unionized industrial heartland, from the steel cities in Pennsylvania to most of the "smokestack" towns that line the rivers and lakes in the Midwest. In northern Minnesota, iron ore towns and ports suffered jobless rates in excess of 20 percent. In Michigan the rate rose to 17.2 percent; in the strongholds of unions it soared to multiples of that amount. The old industrial belt has become a "Rust Bowl," with ghost towns of rusting steel mills and empty machine shops. Mass unemployment is haunting the unionized industries.

The unemployment rates would be even higher if they were to include all those workers who were dismissed or rejected in the past, but found employment elsewhere. A 17.2 percent state unemployment rate may actually amount to a 50 percent rate of union membership, to 75 percent of all present, past and would-be members, and to 99 percent of young people eager and willing to work but barred from employment by seniority rules. It is misleading to speak of a 17.2 percent rate of state-wide unemployment if it consists primarily of pockets of stagnation and decline in union strongholds.

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Settlements with Concessions

Recessions diminish union bargaining power and impose wage restraints, which may even take the form of freezes and cuts in pay and benefits. The Bureau of National Affairs, Inc., a private research organization which monitors hundreds of wage settlements each year, counted 159 settlements with concessions in 1982 and 430 through most of 1983.[4] Union concessions are likely to be made only when senior members are vulnerable to job loss. When junior people are laid off or not hired, the senior members, who are the most numerous and therefore most powerful group in a union, usually continue to demand wage increases. Only when their own jobs are at stake because the employer is suffering dangerous losses or may move elsewhere, will senior members consider wage cuts.

A concession may be too little and too late for saving an employer. When union rates exceed unhampered market rates by several hundred percent, a concession of five or ten percent may not correct the situation. But this may be all the concession senior workers are willing to make. Being eligible for generous shutdown benefits and magnanimous pensions, they may prefer old-rate retirement benefits over cutrate wages. They may take militant positions and "no more concession" stands which, in the end, may destroy the very provider of the pensions.

Capital Consumption Demands Concessions

The wave of union concessions that swept through many unionized industries as a result of the 1981–1982 recession may be ebbing, but it is likely to return in the coming years of high unemployment. The continuing problems of capital consumption and declining labor productivity may exact additional concessions, especially in capital-intensive industries such as steel, autos, trucking, and the airlines.

The essence of virtually all economic policies is to take income and wealth from one group and give them to another. Economic programs are designed to confiscate and distribute; laws and regulations are passed to benefit the poor by taking from the rich. Government budgets propose to tax the rich and borrow from them in order to improve the economic conditions of the poor. Labor laws and regulations mean to raise wages or reduce the onerousness of labor by burdening employers. In short, the end of virtually all intervention is the consumption of productive capital.

The confiscation principle obviously depends on the existence of private incomes and fortunes that can be confiscated. As long as some individuals manage to accumulate

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productive capital and provide net additions per head of the population, the confiscation merely reduces the pace of economic progress. The situation becomes more painful, however, once the confiscation exceeds the capital formation and begins to reduce the amount of capital invested per head of the population. At that critical point every confiscatory measure visibly reduces the economic well-being of the masses whom it is supposed to benefit. New programs now have painful side effects, new entitlements inflict unexpected harm. New strikes work evil on the rest of the people. New business taxes cause wage rates to fall and unemployment to rise. Budgetary deficits consume productive capital and destroy jobs. As transfer expenditures can no longer be financed by "soaking the rich," they must be carried by the masses through lower wages, fewer jobs, and deteriorating living conditions. When that point is reached, further confiscation is inexpedient. It becomes advisable to beat a temporary retreat by making concessions. The givebacks reluctantly granted by the steel and automobile unions must be seen in this light.

Capital-Intensive Industries Are Favorite Targets

Capital-intensive industries always are the favorite targets for labor union assault. They may yield billion dollar returns on many billions of dollars of owner and creditor capital invested, which unions are ever eager to distribute to their members. An industry that earns millions and billions after taxes issues an open invitation for labor union attack. The automobile industry which at times may earn $5 billion or more is a perennial target. Unions simply ignore the fact that the return to owners may constitute but a marginal return on the capital invested. A $1 billion net return on $10 billion of investments may be barely sufficient when the market rate stands at 10 percent. If the rate should go higher while the company return remains at 10 percent or falls even lower, it would become "submarginal," that is, the company would lose productive capital to other investment opportunities and be forced to contract. There would be no new investments in modern tools and equipment because the returns no longer warrant the expenditure.

In the grip of militant labor unions, many companies are prevented from earning a market rate of return on the capital invested. They tend to fall behind their domestic and foreign competition in technological efficiency and innovation, renovation and maintenance, which in the end may cast doubt on their survival. A few union concessions and givebacks may delay the decline, but do not prevent it.

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Capital Mobility Imposes Restraints

Battered by a decade of economic stagnation and rising unemployment, many unions are forced to choose on a plant-by-plant basis between cutbacks, shutdowns and givebacks. Capital mobility between regions and communities is adding to the pressure. This is not to imply that employers learned to pull up their stakes and move to friendlier economic environments. Most business property may consist of fixed assets, tangible or intangible assets long associated with a given location. To move them is clearly impractical. But it may be advisable to close a plant and suffer a limited loss rather than face open-ended losses year after year. In fact, it may become imperative for the survival of an enterprise that loss-inflicting operations be discontinued, and profitable operations in other plants in other communities be expanded.

At times, enterprises with proven records of profitability are closed down because they are said to have lost their ability to compete. Such shutdowns, which seem to be as numerous as the loss-induced shutdowns, always infuriate union agents and public officials who condemn them for their "callous disregard of worker employment and community interest." But a cursory reflection often reveals that all such shutdowns of "profitable" enterprises involve only "submarginal" enterprises that are earning and expecting to earn returns substantially lower than market rates. A union shop earning 2 percent on the capital invested when the going rate of return is 15 percent may be closed if the retrievable funds can yield higher returns elsewhere. After all, the owners may be wary about continually losing 13 percent to union pressures and practices. They serve not only their own personal interests but also those of society by withdrawing productive capital from 2 percent uses and investing it in more urgently needed production.

There is new life in the deep South. The economic expansion rates in the South usually exceed those of the Northeastern and Midwestern manufacturing districts. But it would be a grave mistake to credit the South's good fortune to Dixie raids on Northern industry. The region's economic development is building on business profits and expansion of existing firms. Business seems to be more profitable in the South despite its greater distances to population centers and goods markets in the North.

An important factor of expansion is the "wage-advantage" of the South. Three features of labor cost are creating a competitive advantage over industrial production in the North. First of all, wage rates are generally lower because they

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may be market rates reflecting the true productivity of labor. They may be unimpaired by union coercion and institutional force. Moreover, there may be no union rules and contract restrictions that hamper management in its use of labor. Such rules and restrictions tend to raise labor costs far beyond any boosts in hourly wages. And finally, the attitude of labor may be more positive to personal exertion and effort. Labor unions always create an adversary relationship between worker and employer, which does not make for high labor productivity. The union member who just spent several weeks on a picket line, acrimoniously denouncing his employer and inflicting maximum harm, is unlikely to give him his maximum effort after the strike has been settled. Union labor usually is angry labor with long lists of grievances. Southern labor tends to be more peaceful labor, and its costs per unit of output may be significantly lower than the costs of angry labor in union strongholds.

Cost disadvantages in the old North cause firms to contract their operations or go out of business entirely. When the demise of an enterprise comes in sight there may be some bargaining about concessions and givebacks. In most cases it is too little and too late. The few senior workers who continue to be employed to the end may consent to a mere fraction of the cost reduction needed for keeping the plant afloat. But even if they were to consent to significant cost-cutting they would continue to view it, in union perspective, as a tactical retreat that affords opportunities for reorganization and preparation for counter-attacks. A giveback today may be the harbinger of a double-take tomorrow.

Mergers and Conglomerates

In the industrial Northeast plant closings are a familiar story. Conglomerates, which are corporations made up of a number of different corporations operating in widely diversified fields, are quick to close plants that are no longer competitive. They do not hesitate to pressure labor unions for concessions and givebacks.

The pressure springs from the conglomerate's need to earn maximum returns on the capital invested. The corporation probably was built on a mountain of debt at a time when inflation kept interest rates artifically low and corporate stock could be bought at bargain prices. To serve its debt and support the price of its stock, a conglomerate may impose minimum annual profit targets on its corporate divisions or subsidiaries. Managers who meet the targets may receive generous executive "perks"; those who fail may suffer early dismissal. Compa-

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nies that continually fail to make the "hurdle rate" may be shut down.

Many locally owned enterprises are coasting along on submarginal returns. They are easy prey to powerful national unions imposing their rates and rules. But such companies may be well endowed with real assets that make them worth more dead than alive. The local owners may be reluctant to close them and liquidate their assets because of the calamitous effects such a liquidation may have on employment and the community. While the local owners may hesitate, the conglomerate-owners usually do not. The company, therefore, is sold to a conglomerate that conducts the necessary operation. It closes the plant, liquidates the assets, and assigns the proceeds to more productive employment. It renders a valuable service to consumers and the public at large. As can be expected, local politicians and community leaders may be outraged about the "sudden" shutdown. When the company was besieged and tormented by a national union they probably relished the situation, watching in silence. When the torment finally draws to an end through shutdown, they come alive in a common denunciation of owners and managers.

Nothing foreshadows a shutdown like failure to reinvest. The equipment may be outmoded, the machinery worn out, and fixtures and fittings may be going bad. Union spokesmen have a ready explanation for the decline and eventual shutdown: the greed, folly, and shortsightedness of employers that keep them from reinvesting their profits. This is the most popular explanation in the centers of unemployment and economic decline.

"Incompetence" and "Greed"

As such ugly charges are rather rare in non-unionized industries, it appears that unionized industries are confounded by an extraordinary number of incompetent managers and greedy owners. But such a conclusion contradicts the fact that unionized industries recruit their managers in the very executive market that supplies all other industries. And the owners usually hold stock in other companies in other industries as well. If they fail to invest their funds in unionized industries while they continue to invest in other industries, with "greed" and "incompetence" being the same in all, the explanation must be sought in the only differential factor: the union shop itself. When the owners are suffering painful losses or, at best, are permitted to earn only meager submarginal returns, while the wages and benefits of unionized labor greatly exceed those of other labor, it is unreasonable to accuse the owners of greed and the managers of incom-

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petence. But it is sensible to question the practices of the labor unions.

It is rather revealing to observe unions fume and fuss about the suggestion of small concessions and givebacks. But when operations are winding down or actually have ceased and the workers themselves have become the owners, with much state and community assistance, they usually seek a new beginning by drastically cutting labor costs. The worker-purchase, pulled together in panic and haste by the workers and their community, produces significant concessions and givebacks that were intolerable before the shutdown.

Weirton Steel Corporation, the largest employee-owned company in the U.S., is employing 7,100 workers with another 2,600 on layoff. The purchase of the steel works from National Steel, after National had announced that it would begin to wind down production, had one primary objective: to save employee jobs and the community of about 26,000. The concessions and givebacks granted to the new company were rather astonishing. The wage concession passed by the workers cut base wages to August 1982 levels, resulting in a total reduction of wages and benefits of about 20 percent. The new labor contract prohibited strikes and wage increases during its six-year duration, and rescinded the workers' claims to some $320 million in shutdown benefits, or some $40,000 per worker, to which they would have been entitled if the plant had closed under National's ownership. Moreover, the workers agreed to a purchase price of $193.9 million and the assumption of $192.3 million of existing debt, for a total of $386.2 million, or some $48,000 per job.[5]

In most instances of economic decline the workers neither own the funds nor possess a line of credit for borrowing the funds needed to purchase the firm that employs them. And even if they would manage to raise the required funds, their chances of success would remain minimal because the transition from a union shop mentality that is forever fostering inefficiency, to that of a viable partnership of owners, is rather substantial. But a great deal always depends on the quality of management retained by the worker-owned company for managing its affairs.

Foreign Competition

A large part of American unionized production is lying idle. Unemployment rates, no matter how calculated, are disheartening, exerting a powerful pressure for labor concessions and givebacks. But the agents of labor are ever ready to resist the pressure and lay the blame on the doorsteps of someone else.

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When they do not flail at "incompetent management" or "greedy owners" they may lash out at "unfair" foreign competition and "exploitative foreign labor." Foreign competitors are not free marketeers, they affirm, but are nationalistic, mercantilistic enterprises overrunning American industry in the name of free trade. Therefore, it becomes necessary, so they argue, for the U.S. government to limit the rate of import growth in key industries, such as steel, autos, and machine tools. Government needs to protect the jobs of American workers.

Such arguments need to be refuted again and again. Surely, import restrictions may safeguard a few jobs for American auto workers, but inevitably destroy countless other jobs and depress the living standards of people around the globe. They invite retaliation and breed confrontation. They make matters worse. And yet, import restrictions continue to be most popular with union people because they promise instant relief to an industry facing tough foreign competition. By pointing at foreign conditions attention is diverted from domestic conditions. Domestic industries may suffer from new institutional barriers to production, such as higher taxation, more stringent regulation, or costly labor strife. Foreign industries may face no new production obstacles and, therefore, may enjoy relative cost advantages.

The Japanese seem to be superior at making autos, TV's, tape recorders, cameras, steel, machine tools, and other such products. American observers may point at lower labor costs or at Japanese government intervention as the cause of Japanese superiority. They are blind to the fact that the U.S. government may have handicapped American industries through costly production barriers. It may have imposed prohibitive taxes and expensive regulations, or may have consumed the necessary business capital through massive budget deficits.

Capital Shortages

Capital-intensive industries depend on the availability of capital. They prosper and grow where capital is coming to the market at falling rates; they stagnate or even decline where governments consume capital and cause interest rates to soar to prohibitive levels. Throughout the 1960s, 70s and 80s, the U.S. government suffered phenomenal budget deficits, which caused interest rates to rise to inordinately high levels. It cannot be surprising, therefore, that capital-intensive industries are laboring under growing handicaps. They are contracting in the U.S. while they are expanding in Japan. When Gen-

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eral Motors Corporation must pay 15 percent on capital needed for the construction of a plant while Toyota can secure its capital at 8 percent, it should be obvious that Toyota rather than General Motors will build the modern plant. Toyota labor can expect increases in pay and improvements in benefits; American automobile workers must be prepared to grant concessions and givebacks in order to safeguard their jobs.

Deregulation

Foreign competition is not the only problem for unionized labor. The airline deregulation of 1978 and the motor carrier regulatory reform of 1980 unexpectedly put pressures on labor unions and the carriers that employ union labor. Since then hundreds of small commuter airlines and motor carriers have come into existence. It is significant that they all begin service with nonunion personnel, drawing their labor from the large number of unemployed pilots, drivers, and other skilled personnel on indefinite furlough from the unionized carriers.

Market wages and fringe benefits that are markedly lower than union rates and fringes, as well as freedom from restrictive work rules, give a distinct advantage to the nonunion newcomers. They may offer fare and freight rate discounts, which in turn cause an increasing proportion of passengers and freight to be handled by nonunion labor. Some unions may sense the pressure from nonunion labor and respond with significant concessions. Others may refuse to acknowledge the new situation. Trapped in patterns of the past, they do exactly what they always have done: seek higher wages and benefits for less effort and output.

The concessions and givebacks may be insufficient to cure American industry's problems. And yet, the energizing effects of deregulation together with the wholesome corrections prompted by the 1981–82 recession offer new hope. After fifty years of government regulation and union inhibition, many companies are enjoying their first breath of fresh air.

—FOOTNOTES—

[1]*Barron's*, March 7, 1983, p. 11.

[2]Roscoe Pound, *Legal Immunities of Labor Unions* (Washington, D.C.: American Enterprise Association, 1957), p. 21 *et seq*; Sylvester Petro, *The Labor Policy of The Free Society* (New York: The Ronald Press Co., 1975), pp. 129–131.

[3]*Business Week*, January 16, 1984, p. 23.

[4]*Facts on File*, World News Digest, New York, N.Y., September 30, 1983.

[5]*Pittsburgh Post-Gazette*, September 24, 1983, p. 1.

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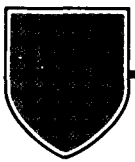
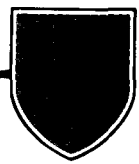
Ridgway K. Foley, Jr.



IN THE NAME OF PROTECTION



LIBERTY falters by reason of the cumulative effect of myriad little follies, each in itself relatively insignificant but in concert producing a resounding crescendo of slavery. Tiny assaults on voluntary action tend to lull us to sleep or at least inaction. No one wishes to deal with the insubstantial or the inconsequential. Nevertheless, each inroad into our freedom fuels and serves to justify succeeding constraints as mankind becomes mesmerized into acquiescence to tyranny.

Consider a case in point: An impending attack upon a proposal to return the sale of airline tickets and the conduct of the travel agency business to the marketplace. The *Oregon Motorist* (January-February, 1984; p. 2), a bimonthly newsletter of the Oregon Section of the American Automobile Association (a cooperative of motor vehicle drivers designed to provide emergency service and tour planning) devoted three columns to the perceived "confusion and irritation" sure to follow if the Civil Aeronautics Board proceeds "with this disastrous plan" to "decontrol" the sale of airplane tickets. Under a banner headline entitled "AAA Opposes Deregulation Plan Threatening Air Travel Convenience," the Oregon AAA staff warned that "this order will mean that virtually anyone can operate a travel agency or dispense airline tickets . . . without the current safeguards" provided by protective law.

The astonishment displayed in the article at the very thought of an unplanned and uncontrolled market

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enterprise sadly reminds the reader of the depths of our descent into the miasma of socialism. What, pray tell, is so perturbing about the belief that any individual—even a person uncertified or unaccredited (whatever that entails) by the state—might provide a service of planning travel adventures and selling tickets to the general public? The article parades additional horribles, such as "more complicated air travel," "higher fares," and "more complex ticketing procedures."

Had the writer studied history in place of polemics, he might have discovered that just the opposite results will occur: Free market entry produces more numerous competitors, each striving to offer the most favorable and efficient services at the lowest possible cost consistent with profitability; the providers who best serve the subjective requirements of the user survive, only to be challenged by other, more innovative men and women who create yet better, more expeditious, less costly service. In place of the perceived complexity and high price, removal of regulatory bars will mandate simpler service at a cheaper cost.

Frederic Bastiat taught us of "the seen and the unseen" effects of governmental slavery; unfortunately, those who pen and publish the *Oregon Motorist* have failed to learn these lessons of history; the tragedy is not so much that they are thus condemned to repeat the mistakes of the past, but that we who are unwilling bystanders must be swept along with the tide of collectivism.

Voluntarism versus Coercive Regulation and Control

History contains countless examples of private, voluntary response in solution of surmised complexities of commercial interaction. Shipping in the late Middle Ages proffered the prospects of great reward and cataclysmic loss; a gaggle of young creative entrepreneurs who gathered for morning discussion and sustenance at Lloyd's Coffee House happened upon the method of taking shares of the possibilities of cargo gain or loss in order to diffuse these extensive risks; from this unsculpted beginning arose Lloyd's of London and its many imitators in the marine insurance field. Similar examples abound, private and voluntary bank clearing houses for the rapid conduct of commercial practice premised upon negotiable instruments and private guaranteed delivery/courier systems, to name but two of many.

Unseen results of compulsion probe more deeply into the fabric of human freedom. Regulation proves to be a useless, fruitless, and worthless pursuit. It shuts out new ideas while consuming countless hours and endless energy, all for naught. The oppressor loses almost as much

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liberty as the serf. Regulation presupposes regulators, those who decree, those who police, and those who adjudicate controls. Each person in the dictatorship thus created devotes substantial time to destructive, noncreative endeavors.

More pertinently, the regulator not only loses his opportunity to exercise his force creatively (and perhaps some measure of his self-respect) but also forgoes the chance to benefit from the creative results of human action which he and his fellow social planners have delayed, denied, or destroyed. In addition, few barriers effectively stymie determined citizens who wish to avoid them. Free men and women are risk-takers, and mankind blessed with an idea may very well escape the monitors by fitting into the interstices of the law or by dwelling in grey or black markets, although at the cost of the waste of vital energy, creativity and morality on the part of both producer and traducer.

Another curious factor perturbs one dedicated to liberty when a clamor arises for government protection. Presumably, unaccredited vendors of airline tickets will occasion excessive charges and great complications in the travel industry. Why? Presumably, because mankind lacks the capability of self-control, decent conduct and effective action. If so, how choose we the regulators? Does some feature of character set them apart from those to be regimented?

I have looked in vain for lo these many years for particular indicia or noteworthy traits enabling me to discover the ideal social planner or assumed public benefactor. I find none. Were I unkind, I might remark that certain tendencies do characterize persons who seek and secure employment in government and that I do not find these hallmarks particularly laudatory. In all fairness, however, one must submit that state servants, by and large, resemble the rest of the citizenry—marked by wens and blemishes, flavored and flawed by mottled qualities of intelligence, ability and integrity—what Leonard Read might have termed "the mill run" of us all.

The Wisdom of Governors

In simple terms, the guardians or saviors who emerge to govern our business affairs are persons much like each of us, blessed with no special ability to forecast, to plan, or to decree. If confusion and complexity will result in the unregulated travel agency business, I fail to comprehend how the appointment of an overseer lacking in any particular ability will improve our lot.

Moreover, the AAA plea for member petition for Congressional action on the premise of disorderly markets ignores the very real existence

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of Dr. F. A. Hayek's seminal concept of spontaneous order developed by the unconstrained market. Adam Smith long ago noted that spontaneity of order follows from the works of the "invisible hand" which harmonizes the multitude of subjective values in a marketplace not partial to the poor nor deferential to the mighty (Leviticus 19:15). Order will transcend from removal of regulatory bindings, an order bereft of little dynasties necessarily conduced with the advent of control.

A further matter deserves attention. Many illiberal intrusions develop from a benevolent but inaccurate motivation that purchasers of goods or services must be "protected" against an array of posited evils. Ofttimes, these dire results are not delineated at all or, at best, are garbed with confusing and ambiguous dress. I suggest that most if not all of these imagined consequences fall under one of the three great heads of Anglo-American equity jurisprudence: Fraud, duress, and mistake. Traditionally, if the common law did not afford relief from some action arising in one of these categories, the chancellor at equity would do so, in order to prevent injustice. Apparently, in muddled form, that quaint jurisprudential theory undergirds the interventionism of our age.

Sound analysis renders it imperative to engage in two interrelated differentiations: (1) Between fraud and duress on the one hand, and mistake on the other; and (2) between prior restraint and post-conduct sanctions. Cursory consideration reveals the defects of reasoning which plague us today in the vast array of regulations contorting our conduct.

First, few will dispute that man should not be permitted to prey upon another by initiating aggression. Coercive action—state or individual—remains anathema to most moral creatures. Society cannot long tolerate unrestricted fraud and duress because tradition and sensible rules of consensus morality, if nothing more, apprise us of the inherent evil. However, the state should be chary of intrusion to prevent or "right" a mistake (unless induced by misrepresentation) because the very concept of mistake arises from a subjective value judgment both on the part of the actor and on the part of the observer.

Self-Responsibility

Conventional wisdom often proves unwise; an apparent error may induce a desirable result. In any case, an individual should not be allowed to shunt the consequences of his voluntary choice onto the shoulders of another person (or society) merely because he forecast poorly and failed to achieve his desired result. If regulation alleviates

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fraud and duress, it merits acceptance (subject to my second *caveat*); if it seeks to correct individual mistakes, however, it should be expunged from the books.

Second, ponder and differentiate between prior restraint and post-conduct sanction. I have treated the subject at length elsewhere (*The Freeman*, October 1981, "Prior Restraint") and thus pause only to observe that prior restraint—a common tool of traditional courts of equity (e.g., specific performance and injunctive relief)—deserves but a limited place in our world of action. In the absence of serious and unquestionably malevolent consequences, it works far better to permit creative human action to flow freely, allowing one actually damaged by improper conduct after the fact to seek legal redress. Human beings, being finite and fallible, possess analytic abilities better suited to assess causality and harm *after the fact* than with prescience. Prior restraint contains too great a chance of forever annihilating conduct and results of positive merit.

As the magnificent historian Richard Weaver chronicled, ideas do have consequences. Man is a moral creature, ultimately responsible for his actions and for the results of his behavior. Thus, each individual must bear the ethical burden both for the idea he espouses and for the consequences which ensue: The adoption of those ideas into hardened law or practice and the effect of those ideas upon subsequent deportment of other men and women. Like it or not, we are accountable, now and hereafter, for our handiwork, and we cannot ameliorate our responsibility by acting as a voluntary or cooperating adjunct to a team, a staff, a mob, or an electorate.

The state consists of those who partake of the power and of the beneficiaries of that coercive body. The state cannot create rights, but it can destroy them. The state cannot create wealth, but it can destroy it. The state cannot create life, but it can destroy it. The state cannot create moral conduct, but it can destroy it. All of these untoward events can occur only if the individuals within the state permit it to pervert the law. We who allow petty little irrationalities—restriction of market entry to purveyors of airplane tickets—with applause or without a whimper in the name of protection, stand accused.

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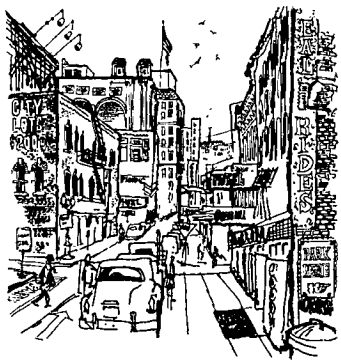
James Doti

Italian Lemonade



THE TASTE of Italian lemonade.... How can one describe it? Can't be done! For Italian lemonade to be at its best, it takes more than the right blend of ice, sugars and fruit chunks. And I don't agree with the so-called experts who say it has something to do with perfecting the right ice crystallization techniques.

Surely, these are relevant technical factors, but I think there is more to it than meets the eye or, for that matter, the taste buds. It has something to do with the environment. That's right—slurping on Italian lemonade is an aesthetic experience. I think that is the reason why Italian lemonade in California never tasted as good to me as the Chicago variety.

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There is something about the late afternoon on a particularly hot and muggy summer day in Chicago. Just when your body feels most ravaged by the effects of the humidity and your legs feel like they are ready to buckle, the humidity lets up and a faint balmy breeze begins to blow in from Lake Michigan. It was at that moment, I found, that Italian lemonade tasted the best. As the cooling flavors of the lemonade invaded the senses, the body's natural rhythm and flow seemed to be restored. It even seemed to help release the grip of the malaise that typically affected Chicagoans during the most severe of summer "scorchers."

No better lemonade could be found than that made by Bella Ciozzia in that part of Chicago known as Little Italy. Not only did all technical aspects of her lemonade rate a

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perfect "10," but the aesthetic conditions couldn't be better. Little Italy was close enough to the lake to benefit invariably from the soothing effect of the lake breezes. An added bonus was that these breezes also helped push out the fetid odor of the nearby stockyards that hung like a cloud around the area on the hottest of days. Thus, if someone were to ask me what is the epitome of true joy, I would not hesitate: Just when the breezes begin to blow on some hot and sticky summer day, true joy is slurping on a Bella Ciozzia Italilan lemonade.

I first developed a taste for Bella Ciozzia's Italian lemonade when as a young boy I would spend several weeks visiting my grandmother during summer vacation. Coming from the suburbs, I found Little Italy to be my wonderland, my land of adventure. Nothing I read in "Classic Comic Books" that retold the novels of Alexander Dumas and Robert Louis Stevenson could compare to the real life adventures of Little Italy. The tightly built neighborhood of row houses and scaled-down Victorians with aluminum awnings and permastone siding was such a contrast to the pasteurized environment of suburbia, so too were the idle pleasures of the youth.

When I asked Vito, the son of a friend of my grandmother who was forced to play with me, how he liked the movies, "Creature from the Black Lagoon" or Walt Disney's "Peter Pan," he responded with a blank stare. His favorite show was put on by the "Ratman"—a local impresario who used captured vermin to put on a show for all those willing to plunk down a quarter. The show consisted mainly of igniting the unfortunate creatures using what sounded like a variety of rather elaborate stage trappings. The Ratman soon displaced the creature from the black lagoon as the principal heavy in my nightmares.

One might well understand and appreciate then the respite from this world offered me by my daily visits to Bella Ciozzia. My nickel's worth of Italian lemonade bought an inestimable amount of pleasure. A special treat was that Bella Ciozzia allowed me to jiggle her snow-filled glass memento of the 1933 "Century of Progress" Exhibition. Perhaps the most vivid memories of my summertime visits to Little Italy consisted of my slurping an Italian lemonade while watching snow fall on the silhouetted background of the "Century of Progress" skyline.

A Fierce Fighting Spirit

Bella Ciozzia was a soft-spoken, petite and quite beautiful woman. She earned her name "Bella" because her small nose, blond hair and blue eyes were roundly admired by the locals. Bella Ciozzia came from a small village in Sicily that was in-

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vaded by Nordic traders who evidently had nothing to offer in trade for the goods they received except for some very dominant genes. To this day, everyone who comes from that village has blond hair and blue eyes. But as I was soon to find out, Bella Ciozzia inherited more than her good looks from the Norsemen; she also inherited some of their fierce fighting spirit.

The following summer, probably because of the strange fascination that all children seem to have for the macabre, I inquired about the latest theatrical efforts of the Ratman. Vito glumly responded that the shows had come to an end. It so happened that Bella Ciozzia somehow got wind of the goings-on. Evidently, seeing no socially redeeming merits in the show, Bella Ciozzia interrupted the presentation during a particularly climactic moment, flailing away with a huge Italian rolling pin. The Ratman made a quick and ignominious final exit. So too, as Vito related, did the youthful audience.

From that moment on Bella Ciozzia was my hero. She seemed to represent those of the quiet and meek who say little but when pushed beyond a certain point by some outrage will trigger a mechanism that operates suddenly to release their pent-up emotional energy.

So ten years later when I moved back to Little Italy to attend a nearby university, I was happy to find Bella Ciozzia still scooping out Italian lemonade. But now the calming effect of the lemonade soothed the ravages to my system brought on by "Beowulf" and national income accounting rather than the Ratman. You can well imagine then the consternation I felt when on one balmy Friday afternoon Bella Ciozzia told me the building department came and took her equipment away.

"They tella me I no sella no more. They say I donna have 20 . . . 222 . . . 280 . . . I donna know—somma kinna wires," she said as she shrugged in the characteristic Italian way that roughly translated to, "That's life."

I couldn't understand it; Bella Ciozzia was a neighborhood institution. But being a young student who had just mastered the basic elements of political science, I felt that a wrong had been committed that I could help right.

Take It to Alderman

The person to see was Alderman Tom Cooley, otherwise known as the "General." I was sure that he could help even though everyone in the neighborhood considered him a buffoon and political gladhander. In fact, the General was commonly known in the neighborhood as the "Citrulu"—an Italian term of derision reserved for the more inept of

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the human species. The locals put up with him though and even regularly elected him to his office in spite of the fact that everyone resented his expecting and getting all the free beer and beef sandwiches his belly could hold at the annual festival of Our Lady of Mt. Carmel. The fact was he controlled all the patronage jobs that were doled out to a few people who were related in some extended and convoluted way to everyone in the neighborhood.

When I walked into the General's office, he sprang out of his chair to shake my hand. The General was animated and lively when we started talking about the people I knew in the neighborhood. But when I began to present an impassioned plea for the gross injustice done to Bella Ciozzia, his eyes glazed. As I continued, his facial expression turned to a look of concern. But the concern was not one of compassion or empathy, it was a look that told me he wasn't listening to a thing I was saying. I was quickly escorted out to meet with the many aides who hovered like flies around his office. All they could do was point to the voluminous stacks containing the city code that specifically pointed to the illegality of Bella Ciozzia's transgressions.

The truth finally came out after meeting with our local precinct captain who said, "Are you crazy ... going to see the General? That Citrulu actually thinks that Bella Ciozzia was closed down because she doesn't have 220 wiring. Ha! The squeeze has already been put on with the higher-ups. Big Jake is building a new house next to Bella Ciozzia's. You think he wants to live next to a lemonade stand? Besides, Bella Ciozzia doesn't need the money; she's living with her daughter."

This was the information I needed. I felt elated as I ran to inform Bella Ciozzia about the seamier side of politics and the real motivation in closing her down. As I ran, I had mental pictures of the General and his aides scurrying in various corners of City Hall being hotly pursued by Bella Ciozzia and her infamous rolling pin.

When I finally got there and told her, Bella Ciozzia gave another one of those shrugs of acceptance. I couldn't believe it. Had the passage of ten years taken away her Nordic fighting spirit?

I don't think so. It was more than that. I think it really involved the fact that Bella Ciozzia, like most of those living in Little Italy, came to this country to escape a land and an economy that was ravaged by an oppressive and corrupt government. Coming to this country, they cherished the freedom and opportunities this new land offered. A little corruption is something these streetwise people understood as a fact of

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life. Compared to what they had left, it was something they could even accept.

The Tendency of Governments to Expand in Size and Scope

Karl Marx believed he had uncovered an inherent flaw in capitalistic systems when he wrote that exploitation by capitalists will bring about the downfall of capitalistic systems. History has proven Marx wrong. But Marx's use of the Hegelian dialectic could have been directed in a different way to expose a more real danger in capitalistic systems. And that danger relates not to the "unearned surplus" or "subsistence wages" but to the tendency for governments within a capitalistic system to expand in size and scope until they ultimately stifle individual freedom and the inherent efficiency of private markets. Marx's prophecy of doom for capitalism would have been more plausible if he tied its downfall to the exploitation of government and collective decision making rather than capitalists' urge to maximize profits.

A limited government is necessary in a capitalistic system. Adam Smith was specific about the role that government should serve in providing national defense, a judicial system and other public institutions and works that in the main facilitate the commerce of society. (*The Wealth of Nations,* The Modern Library Edition, pp. 653–682) But Smith was not specific enough; nor could he be. There is no clear line that separates a public from a private good. Thus, those who find operating in the cold cruel world of the marketplace a less than happy or not very profitable state, have a strong motivation in expanding the role of the government in the free market. This motivation, however, is fairly commonplace. In the end, the free market loses its vitality as economic matters are decided in a tug-of-war fought out among competing interest groups in the halls of government rather than in the arena of the marketplace.

These are the powerful interest groups that have strong incentives to either help make laws or manipulate well-intended laws to their own advantage. The political clout of such groups is evident when one considers that the top spending political action committees (PACs) increased their donations to federal campaigns eighty per cent in 1983 compared to the previous non-election year of 1981. Recent trends also suggest that spending for the 1984 federal congressional elections will near a half billion dollars of which a large share will be funded by PAC spending. (*The Wall Street Journal,* Feb. 23, 1984, p. 54.)

The willingness of groups to spend such vast sums is certainly tied to the economic advantages to be gained by a benevolent government.

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As stated by a representative of the National Association of Realtors: "We give early money to our friends, people who are tried and true. We don't care if a knight in shining armor comes in and runs against him (the incumbent); he's been our knight in shining armor." (*The Wall Street Journal,* Feb. 23, 1984, p. 54)

And though the private gains that could occur from this knight come at the cost of a greater loss to society, the gains accrue to an individual or identifiable group while society's loss is spread out thinly among many. As a result, the significant private gains provide a much more powerful incentive to influence government than a less interested individual has in politically opposing such influence. Hence, all groups who find that a system of government coercion will somehow make the uncertainties of the world (profits) less uncertain will continually prod our government until the laws work to their own advantage. And the more laws that exist, the more likely it is for powerful interest groups to bypass normal market forces.

In the case of Bella Ciozzia, someone found it cheaper to use some well-intended building code to close her down rather than use the normal market procedure that would otherwise have been followed—buying her out. It may seem as if the two have the same ultimate impact, but they don't. If a mutually agreed upon price could be reached, that suggests retiring Bella Ciozzia's lemonade scoop would bring about a smaller loss to lemonade consumers than the private gain to the person living in the new residence. But if such a price cannot be agreed upon, the opposite would be true; society would gain more by Bella Ciozzia staying in business. Unfortunately, when government coercion applies, there is no assurance that the efficient market solution will occur.

Someone had a strong private interest in closing Bella Ciozzia's business. And this private interest provides the basis for a much stronger incentive to push the government in a self-serving way than any single Italian lemonade consumer can muster to oppose it. Thus, Italian lemonade connoisseurs will likely lose in any political tug-of-war even though in the aggregate or from a social point of view, the loss to consumers may be greater than the gain to the person who shut Bella Ciozzia's operation down. In the end, the inefficiency occurs because it is both possible and cheaper to get the building department to close her down rather than buy her out.

Many Similar Incidents

The Bella Ciozzia incident can be retold in countless forms. All you have to do is look at the vast number

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of laws and regulations that envelop this country. Behind many of these laws, a Bella Ciozzia story is ready to be told. There will be different names, a different location and different motivations, but the theme will be the same: The laws favor a few at the expense of many.

Who are at fault? Are they the General Cooleys of this world? No, they are simply willing dupes. Are they the powerful interest groups that push for self-serving laws? No, they are simply attempting to maximize their private gains—the prime motive force of any economic system. The real fault rests with a people who are not sufficiently vigilant in holding the reins on their government. As John Stuart Mill stated in his classic essay, *On Liberty:*

> Let them be left without a government, every body of Americans is able to improvise one, and to carry on that or any other public business with a sufficient amount of intelligence, order, and decision. This is what every free people ought to be: and a people capable of this is certain to be free; it will never let itself be enslaved by any man or body of men because these are able to seize and pull the reins of the central administration. (*On Liberty,* W.W. Norton & Company, p. 104)

In our recent history, however, we almost seem eager to enslave and shackle ourselves with a heavy chain of laws and taxes. Usually under the guise of helping someone or other or providing for this or that, such laws and taxes may seem justified to a reasonable people. Yet, piling laws and taxes on top of each other ultimately places a heavy burden on society. And this burden becomes more oppressive as laws become agents for dispensing with the normal forces of a free market. We should not quickly forget the greatest danger that John Stuart Mill saw in a rapidly growing government:

> The third and most cogent reason for restricting the interference of government is the great evil of adding unnecessarily to its power. Every function superadded to those already exercised by the government causes its influence over hopes and fears to be more widely diffused, and converts, more and more, the active and ambitious part of the public into hangers-on of the government, or of some party which aims at becoming the government. (*On Liberty,* p. 102)

Nor should we forget the words of Henry David Thoreau who wrote in a similar vein:

> . . . this government never of itself furthered any enterprise, but by the alacrity with which it got out of its way. It does not keep the country free. It does not settle the west. It does not educate. The character inherent in the American people has done all that has been accomplished; and it would have done somewhat more, if the government had not sometimes got in its way. (*On the Duty of Civil Disobedience,* The Simple Life Press.)

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A number of years ago, as I was leaving O'Hare Airport to fly to my new home in California, I caught sight of an article in a local newspaper. It reported that the Chicago City Council was considering a proposal of the Illinois Gasoline Retailers Association to make it illegal to display signs that posted the price of gasoline at local service stations. The rationale was that getting rid of unsightly signs would create a better environment for the city.

Settling back in the airplane, I felt content and happy to escape from a city that allowed such blatant collusion between business and government. But as I started to read a complimentary copy of the *L.A. Times* that the airline had kindly provided, my eyes were drawn to a headline: "State Assembly Considers Limits to Optometrist Advertising."

The airline attendant could only stare when I asked her for an Italian lemonade.

IDEAS ON LIBERTY

Individual Liberty

I must not, in picking to pieces the notion that wishes are rights, leave the impression that wishes, of and by themselves, are proper objects of scorn. On the contrary, wishes, hopes, aspirations are among the most important forces motivating human progress, evolution, emergence. At issue here is only the means of their gratification.

We who reject illusory schemes are not denying the good life to others but merely pointing out that these political nostrums can lead only to desolatory dead ends. No good end can be reached by choosing a wrong way.

While it is not the purpose here to explain the right way, that way is far from a secret—even though it be but little practiced and only slightly perceived. The right way is the greatest gratifier of human wishes ever come upon—when allowed to operate. It is as morally sound as the Golden Rule. It is the way of willing exchange, of common consent, of self-responsibility, of open opportunity. It respects the right of each to the product of his own labor. It limits the police force to keeping the peace. It is the way of the free market, private property, limited government. On its banner is emblazoned Individual Liberty.

LEONARD E. READ, "When Wishes Become Rights"

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Barry W. Poulson

The Constitutional Crisis: An Historical Perspective

As we approach the bicentennial of the ratification of the Constitution, Americans face what many regard as a constitutional crisis. A resolution calling for a constitutional convention to limit the spending powers of government has been approved by thirty-one out of a required thirty-four states. Over two hundred other constitutional amendments, many of them dealing with economic issues, have been proposed in Congress in the last three years. We seem to be rapidly approaching a state of constitutional anarchy in which a host of economic problems remain unresolved within the framework of the Constitution. If we are to avoid a constitutional crisis, we must understand the origins of the economic provisions in the Constitution and what has happened to those provisions through Supreme Court interpretation over time.

In 1776 Adam Smith published the *Wealth of Nations,* the foundation of modern economic science, wherein he explained the basis for American prosperity:

> Plenty of good land and liberty to manage their own affairs in their own way, seem to be the two great causes of the prosperity of all new colonies. In the plenty of good land the English colonies of North America, though, no doubt, very abundantly provided, are, however, inferior to those of the Spaniards and Portuguese, and not superior to some of those possessed by the French before the late war. But the political institutions of the English colonies have been more favorable to the improvement and cultivation of this land, than those of any of the other three nations.[1]

As Smith pointed out, America began not only with an abundance of resources, but more importantly, with a set of political institutions that had evolved over centuries in England. As citizens of the British Empire, Americans enjoyed property rights embodied in the British constitution and defined and enforced through common law. The origins of those property rights can be traced back to the Magna Charta in 1215, which states that no freeman "shall be arrested or detained in person, or deprived of his freehold,

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or outlawed, or banished, or in any way molested . . . unless by the lawful judgment of his peers and by the law of the land." The precedent for limited government was established in the Statute of Monopolies when the British Parliament limited the power of the crown to create legal monopolies. From the Glorious Revolution of 1688 emerged a set of political institutions based upon a constitution and representative democracy.

British citizens, including the American colonists, enjoyed property rights that were defined and enforced through a system of common law that had also evolved over centuries. American courts referred to common law precedents in Blackstone to define and enforce individual property rights. In Blackstone, property rights are vested in the individual by the immutable laws of nature before they enter a constitutional contract to form a civil society; the law "will not authorize the least violation of it; no, not even for the good of the whole community . . . the right of property is founded in the law of nature, and it is antecedent to all civil regulations."[2]

Underlying these political institutions of constitutional government and common law was the ideology of classical liberal political economy as developed in the writings of Hobbes, Locke, Rousseau, Burke, and others. The Lockean concept of natural rights and social contract was the foundation for British law translated to the American setting.

The American colonists, in fact, enjoyed property rights that were more clearly defined and enforced than for countrymen in England, as revealed by property rights in land. As Adam Smith observed,

> But in all the English colonies the tenure of the lands, which are all held by free socage, facilitates alienation, and the grantee of any extensive tract of land, generally finds it for his interest to alienate, as fast as he can, the greater part of it, reserving only a small quit-rent.[3]

Free and common socage meant that the owner of the land could will, lease, or sell the land as he chose. He might have to pay certain incidents or taxes on the land, but those payments had to be fixed and certain and no new obligation could be imposed upon him. After the Revolution the right to impose taxes on the land was vested in the state, and traditional feudal obligations and constraints on the landowner were abolished. From a system of free and common socage evolved the fee simple form of land ownership.

Fee simple was the clearest definition of property rights giving the individual the maximum freedom to use the land, sell it, or pass it along to his heirs, unencumbered by obligations or constraints upon his

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rights of ownership which still persisted in Europe. This property right in land provided individuals with an incentive to utilize the land in productive ways, facilitated the rapid development of our natural resources, and established the institutional framework for the small family farm which predominates in American agriculture down to the present day.

Unprecedented Freedom

The freedom to enjoy those property rights depended upon constitutional constraints on the power of government to intervene in economic affairs. The American colonists enjoyed an unprecedented freedom from government taxation and regulation of their affairs; indeed, this period in American history can be described as an anarchistic utopia. While the British had an elaborate system of taxation and regulation embodied in the British Navigation laws, the American colonists successfully ignored and circumvented those laws. The American Revolution was triggered by British efforts to enforce these taxes and regulations.

After the Revolution, Americans probably would have preferred to return to the anarchistic utopia they had enjoyed in the early colonial period, but the necessity for a constitutional contract establishing at least a limited central government had been revealed during the war and post-war years. The *Federalist Papers* written to support ratification of the Constitution convey the ideological foundations for this fundamental institution in classical liberal political economy. The concept of property rights was embodied in the 5th Amendment, that a person shall not be deprived of "life, liberty or property without due process of law." Americans interpreted these property rights in very broad terms as revealed in the writings of Madison:

> This term [property] in its particular application means "that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual." In its larger and juster meaning, it embraces everything to which a man may attach a value and have a right, and *which leaves to everyone else the like advantage.* In the former sense, a man's land, or merchandise, or money, is called his property. In the latter sense, a man has a property in his opinions and the free communication of them. He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them. He has property very dear to him in the safety and liberty of his person. He has an equal property in the free use of his faculties, and free choice of the objects on which to employ them. In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights.[4]

Property rights were also protected by specific constitutional con-

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straints on the power of government. In addition to the due process clause, the Constitution specifically prohibits retroactive laws and requires that laws affecting private property, such as laws of taxation, be general and uniform. The contract clause placed limitations on the power of the government to interfere with contracts between the state and the individual as well as contracts between private individuals. The commerce clause restricts federal government regulation to interstate commerce, reserving regulatory powers over intrastate commerce to the individual states. Property rights were also protected by the broader provisions of the Constitution reserving powers to the states, and establishing separation of powers in the different branches of government.

Equal Opportunity Meant Equal Protection Under the Law

In the early 19th century, the Supreme Court established the neutrality of the Court and the supremacy of the Court in adjudicating constitutional issues. In a series of decisions, the Supreme Court defined the various provisions of the Constitution so as to more clearly define and protect the property rights of American citizens. American society was governed by a rule of law which protected the property rights of a citizen from coercion by government as well as by his fellow citizens. A person's actions were judged to be legally permissible, not by reference to whether they yielded benefits or losses to society, but whether they violated the rights of others in the society. Equal opportunity meant equal protection under the law.

It should not be surprising to find that the 19th century witnessed rapid economic growth and development. Within this institutional framework, Americans had the greatest freedom to maximize their individual welfare and in the process maximize the welfare of the society as a whole. This was reflected in rapid growth in population and westward expansion, high and sustained rates of growth in income per capita, and improvements in standards of living.

Rapid economic growth was also accompanied by greater inequalities in the distribution of income and wealth. One could identify a group of wealthy citizens, a larger middle class, and a number of Americans living in what Henry George referred to as vice and misery. In his book, *Progress and Poverty,* George called for the redistribution of wealth to achieve a more egalitarian society.[5] Reinforcing these sentiments was a utilitarian ideology developed by Bentham and others. The presuppositions of classical liberalism were replaced by utilitar-

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ianism, i.e., improving social welfare by maximizing the greatest good for the greatest number.

For Bentham and other utilitarians, the calculus of pleasure and pain could be refined into a rationale for legislation and adjudication. Of course, this required some definition of social welfare that would take precedence over individual property rights, and political economists were quick to offer such definitions in terms of an egalitarian society, rapid economic growth, and other visions of social progress. The new philosophy of empiricism seemed to establish utilitarianism as a scientific approach to human affairs analogous to the developments taking place in the physical and natural sciences.

Special Interests

Within this ideological environment, changes began to occur in American institutions. Various interest groups began to look upon government, not as a set of institutions to guarantee individual property rights, but rather as an institutional arrangement to be used to benefit their narrow interest group. Farm organizations such as the Grange, labor unions, and business interests successfully lobbied for special interest legislation, and government at both the state and national level responded with an unprecedented array of taxes and regulations that conflicted with individual property rights.

The crucial question was whether the courts would legitimize this change in the rules of the game or continue to protect individual property rights under the Constitution. The courts did not suddenly abandon their role as a neutral arbiter on constitutional issues, but they did begin to redefine the Constitution in ways that permitted an expansion in the powers of government, resulting in an erosion of individual property rights. While this change in the rules of the game occurred over a long period of time, one can identify the case of Munn v. the State of Illinois in 1877 as the landmark decision.

In response to the Grange influence, the state of Illinois passed legislation fixing the rates charged by grain elevators. Munn, who was a grain elevator operator, challenged the regulations as a violation of his property rights under the due process clause of the Constitution. In upholding the regulatory power of the state government, the Supreme Court introduced a doctrine that would have a profound effect on property rights in this country. The Court ruled that property cloaked with the public interest may be subject to control for the common good.

In subsequent decisions, the Court continued to protect private property rights under what is de-

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fined as substantive due process. The courts legitimized government regulation that infringed upon private property rights, but they maintained that such regulation must be reasonable. Before the state could infringe upon private property rights, it was required to demonstrate that the ends were justified and that the specific government legislation was a reasonable means to that end. For example, railroad rates could be regulated, but the state was required to show that the regulated rates were not unduly confiscatory but were reasonable. This required that the courts interpret the reasonableness of legislation with respect to the ends and the effectiveness of the legislation in achieving those ends.

The "Rule of Reason"

This "rule of reason" left a wide scope for judicial interpretation depending upon the point of view of the justices, which of course changed over time. While the decisions of the justices were often conflicting and arbitrary, the courts negated a wide range of legislation that did not satisfy the rule of reason. Thus, the courts continued to function as an independent judiciary protecting economic liberty under the Constitution during the half-century of substantive due process up to the 1930s.

The Great Depression brought fundamental changes in American institutions. Farmers, workers, and businessmen all turned to the government for aid in the economic crisis. The Roosevelt administration responded with the New Deal calling for government regulation of virtually every aspect of economic activity. The National Recovery Act established government controls over most manufacturing industries, regulating prices and output. The Agricultural Adjustment Act imposed similar controls over the agricultural sector. Banking and financial institutions were subject to a wide range of government regulations. The Tennessee Valley Development Act brought the government into direct competition with private utility companies. The Wagner Act shifted the government to the support of labor unions as collective bargaining agents in labor markets. Governmental transfer activities expanded at an unprecedented rate through employment programs, welfare programs, social security, and unemployment insurance.

This decidedly collectivist shift in our institutional framework was defended on pragmatic grounds. The architects of the New Deal argued that we could no longer rely on laissez-faire institutions based upon private property rights; the problems of the Great Depression required a governmental solution. The philosophy of pragmatism developed

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by Charles S. Peirce, William James, and John Dewey provided ideological underpinnings to this pragmatic approach to government policy, and the political economy of John Maynard Keynes provided an economic rationale for the expanded role of government in the economy. But the crucial question in the 1930s was how the Court would deal with the new legislation.

The initial response of the Supreme Court was to negate much of the New Deal legislation on the grounds that it violated the Constitution. However, in the late 1930s, the Court reversed itself, sanctioning New Deal legislation which it had earlier declared unconstitutional. Legal scholars still debate the causes for this shift in the Court's position. Certainly, the political pressures of the Great Depression, and more specifically Roosevelt's Court packing scheme to change the composition of the Court, must have influenced the justices. Yet the shift in judicial interpretation must also be understood in the context of the erosion in private property rights that had occurred since the late 19th century.

Abdication of the traditional role of the Court in judicial review of economic legislation was justified on the grounds that economic liberties are subject to a lower standard for judicial review than personal liberties. In the words of Justice Douglas:

> We are not concerned, however, with the wisdom, need or appropriateness of the legislation. Differences of opinion on that score suggest a choice which should be left where it was by the Constitution . . . to the states and to Congress . . . There is no necessity for the state to demonstrate before us that evils persist despite the competition which attends bargaining in the field. In final analysis the only constitutional prohibition or restraint which respondents have suggested for the invalidation of this legislation are those notions of public policy embedded in earlier decisions of this court, but which, as Mr. Justice Holmes long admonished, should not be read into the Constitution. Since they do not find expression in the Constitution, we cannot give them continuing vitality as standards by which the constitutionality of the economic and social programs of the states is to be determined.[6]

The Rational Relation Test

What emerged from this judicial interpretation was the rational relation test requiring minimum scrutiny of economic legislation. Any legislation can pass this minimal standard for judicial review if it does not impinge upon the personal rights defined in the first amendment and has some rational relation to a public purpose. Since every economic regulation has some rational relation to a public purpose, the rational relation test has meant judicial withdrawal from further review of legislation, even when it violates individual property rights, imposing

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severe economic burdens on the individual. Since the 1930s, the Court has not invalidated a single piece of economic legislation on Constitutional grounds. A virtual explosion in legislation has established a ubiquitous role for government in the economy sanctioned by judicial abdication in reviewing that legislation.

This change in the rules of the game has had a profound impact on the institutional framework of the American economy. The expanded role for government has created even greater incentives for transfer activities as opposed to productive activities. As more resources have been allocated to transfer activities through the public sector, the productivity and wealth of the society has diminished. In spite of this shift from productive activities to transfer activities, the economy has continued to experience growth and development.

In the words of Adam Smith, "the uniform, constant, and uninterrupted effort of every man to better his condition, the principle from which public and national, as well as private opulence is originally derived," has been "powerful enough to maintain the natural progress of things toward improvement, in spite of both the extravagance of governments and of the greatest errors of administration. Like the unknown principle of animal life, it frequently restores health and vigour to the Constitution, in spite, not only of the disease, but of the absurd prescriptions of the doctor."[7]

Changing Rules of the Game

Recently, economists have questioned whether our society will continue to prosper in an institutional framework which motivates people to engage in transfer activities rather than productive activities. More importantly, they have challenged the change in the rules of the game that gave rise to these transfer activities. It is clear that the writers of the American Constitution incorporated a concept of property rights which included economic liberties as well as personal liberties. Over the first century of our history, the courts functioned as an independent judiciary interpreting the Constitution so as to protect individuals' economic as well as personal liberties. In the last century and especially since the 1930s, those property rights have been eroded as the courts abdicated their role in subjecting economic liberties to a lower standard of judicial review than personal liberties.

The modern heirs of classical political economy such as James Buchanan and Gordon Tullock, have developed the public choice paradigm built upon the Lockean presupposition of natural rights and social contract. In the public choice

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paradigm, there is no constitutional basis for a dichotomy between economic liberty and personal liberty; indeed, it is difficult to perceive of a society in which individuals enjoy one set of property rights without the other. The freedom to do material things is just as important as freedom of expression and other personal liberties.

How Americans resolve this controversy over the economic provisions of the Constitution will have a profound impact upon the future of the society. Some political economists, such as Milton Friedman, argue that property rights have been so eroded over time that the only course of action to secure those rights is through constitutional amendment. Yet a constitutional convention organized to incorporate an economic bill of rights into the Constitution could easily lead to changes in the Constitution that would destroy individual property rights rather than secure them.

For those of us unwilling to take that risk, an alternative course of action appears more viable. We can enact rules to limit federal government spending and taxation as we have done at the state and local level. We can demand the withdrawal of government from antitrust, and regulatory activities, that infringe upon private property rights. We can substitute private enterprise for government enterprise where the private sector can perform those activities as well or better than the government. Finally, we can set limits to the transfer activities that take place through the public sector.

These proposals appear radical only because in the last half-century, we have learned to live with the dead weight burden of a ubiquitous role for government in the economy. Our economic liberties have been eroded because the government has expanded; if we are to protect those liberties, we must set limits to the power of government to intervene in our economic affairs. We can do that within the framework of the Constitution because economic liberties are embodied in the property rights provisions of the Constitution dealing with personal liberties. The burden of protecting those liberties is no greater today than it was when the Constitution was written.

—FOOTNOTES—

[1]Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (New York: Random House Modern Library, 1937), p. 538.

[2]W. Blackstone, *Commentaries* 134, 135, 140.

[3]*Op. cit.*, Smith, p. 539.

[4]*The James Madison Letters*, March 27, 1792 (New York: Townsend McCoun, 1884), p. 478.

[5]Henry George, *Progress and Poverty: An Inquiry into the Cause of Industrial Depression* (New York: Robert Schalkenbach Foundation, 1979).

[6]*Olsen v. Nebraska*, 313, U.S. 236 (1941).

[7]*Op. cit.*, Smith, p. 326.

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Steven E. Daskal

Greed, Envy and Justice

MOST PEOPLE would agree that justice is an admirable thing, something that should be guaranteed as a right to all people throughout the world. It is a term that implies reason prevailing over emotion, good over evil, and fairness over inequity. Greed and envy, on the other hand, are generally seen as undesirable traits, railed against from pulpit and rostrum throughout the world. Yet despite this near-universal praise of justice and an equally universal condemnation of greed and envy, we still seem to have little justice in the world, while having made no significant dent in the amount of greed and envy. Why is this true?

For over three millennia, organized religion and wise governments have cried for justice, worked for justice, and in some cases declared justice to be their primary goal. At the same time, most religious and secular rulers have criticized greed and envy as base emotions, likely to lead to criminality or such confusion of the mind as to prevent the attainment of enlightenment and spiritual peace. Why, then, are so many human beings still denied (or denying others) justice? Why are there so many envious, greedy people still in the world?

For a significant number of modern politico-economic thinkers, the reason for this problem is that the common conceptions of justice are wrong, and that government action (i.e., the sanction to use force) is necessary to eliminate greed and eliminate the cause of envy. The number of prominent figures supporting this notion seems to have grown alarmingly in recent years, and many na-

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tions have taken up these new conceptions. Justice was traditionally seen as the equal application of law to all citizens, regardless of status or wealth. In religious teachings, justice was linked to basic norms of desirable behavior, such as treating people with honesty, compassion, and respect in all situations. Justice did not entail equality for all citizens, but rather equal access to legal recourse in the event of an attack on their life, property, or personal freedom (however wide or limited such freedom was in that society).

Two Views of Justice

Equality was not equated with justice. Greed and envy were accepted as part of life, but it was hoped that with all citizens protected from infringement upon their physical and economic liberty, all citizens would turn that greed and envy into a productive force, a force motivating them to hard work, frugal habits, and imaginative approaches to improving their lives and their products. The American Declaration of Independence well summed this up as "life, liberty, and the pursuit of happiness." Note that the *pursuit* was guaranteed, not happiness itself.

The new conception of justice, greed, and envy is quite different. Justice in the new conception is directly equated with equality, especially social equality. Hence, justice is often called "social justice," and is used to signify a process of enforced equalization, the goal of which is to lessen the differences in material wealth between individuals. Greed becomes a totally irredeemable trait that is socially destructive and intolerable. Greed is what motivates people to resist social justice. Envy is considered a totally acceptable trait, on the other hand. It is expected that everyone will envy those more fortunate or successful than they are unless there is true social justice. Only social justice, which will bring equality to all, can eliminate envy.

Greed and envy as driving forces to encourage hard work, frugality and innovation are now eliminated, replaced by "social consciousness" or other terms that signify that what men once would do out of self-interest, they would now magnanimously do for the good of all, without recompense. This is quite a lot to expect of most people, and so most societies totally committed to this new conception of "social justice" call for the creation of "the new man," or "the socialist man," and will create him through a variety of means, including childhood education, rigid social discipline (elimination of personal freedom), and re-education of adults (either in psychiatric hospitals or "development camps").

What of our own country, though?

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We are not totally committed to "social justice," are we? We still maintain a firm desire to encourage free enterprise, hard work, frugality, and innovation through market means, after all. Or do we? We have progressive income taxes, restrictions on what can be taught and where it can be taught, and a variety of other measures that seek to bring about a certain amount of "social justice" right here in the United States of America. Many prominent political, religious, and social figures call for more "social justice": more guaranteed rights and entitlements, more ways to eliminate "windfalls" and "excessive profits." We aren't as free from these "new conceptions" as we might like to think.

Demands for Equality

Some of those political figures who call for "social justice" mask their goals, by crying out for a "safety net" for those unable to fend for themselves, whether that weakness is by choice, by chance, or by necessity. These political figures claim that the "average American" wants to see everyone who earns more than he does have that "excess" taxed away to bring the "needy" up to the level of the "average" man. Is this true? I suspect not.

If you were to ask the "average" man if he wished he were wealthier, I suspect the majority would say yes. However, if the "average" man were asked if other people's money should be taken to make him wealthier, I suspect the "average" man would say no, with considerable indignation. He might even add, "I'm no thief; I can make it on my own." That "average" man certainly would not want to become rich if it meant that the added effort involved would only make him liable to new taxes that will reduce him back to "average" wealth. In fact, the real problem is that in such a society, that "average" man wouldn't even try to get ahead through hard work and frugality and imagination. He would just try to get by and hope for better times . . . just as the majority of "average" men in Eastern Bloc countries do today!

If the "average" American isn't the one calling for "social justice," then who is? It might be those at the bottom of the economic ladder, those unfortunates who are unable or unwilling to get up out of the poverty trap. However, many of these poor individuals are doing their best to get ahead on their own. They wish that their taxes were lower, and that their dollars would go further, and that they could get a raise . . . just like the "average" guy. Others wish that they had more money for "big ticket" items such as homes, cars, and medical care . . . items whose prices have been pushed up by the cost of a variety of measures

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trying to promote "social justice" beyond their reach. In frustration, these people ask for government help, not aware that the government was a major cause of their plight in the first place.

Finally, there are those poor people who seek to live off the wealth of others. They feel "entitled" to "social justice," and feel no obligation to seek work. At one time, they may have tried to work, but found that union seniority rules, limited education, and minimum wage laws (to name a few causes) conspired to deny them access to a job. Or, they may be physically unable to work due to handicaps beyond their control. Yet, it is questionable that this group of beneficiaries of "social justice" have the influence or ability to propose and carry out such a plan. They are poorly educated, they are psychologically depressed, and they tend not to vote or write their political representatives for assistance. There must be some other group responsible for the big push for "social justice" and equality.

Pressure from Intellectuals

My suspicion is that another group is really responsible for pressing for "social justice" throughout the world. They are a very sophisticated group, influential at all levels of society, and generally very unhappy with the way they feel they are mistreated by, and undervalued by, society as a whole. They are the people who led the original Bolsheviks, the original Chinese Communist Parties, and the majority of leftist organizations found in the Western World today. They are educators, professional academics, and social workers. They are frustrated students who never found professions worthy of them, and petty bureaucrats who felt the existing governments denied them the power they "needed" to perform their duties "efficiently." These people tend to consider themselves superior to the "lazy bankers," "rich capitalists," and "wealthy landowners" who are economically better off than they are. These same individuals use their positions in government, in schools, and in the media, to influence the "average" man to agree with them, and to encourage the wealthy to support them out of guilt and a sense of duty. They have succeeded all too well.

What about the "average" man? Does he think that he is worth as much as the wealthy person? He very well might, because he equates *effort* with *product*. To the average man, his thirty-seven hours building machines on an assembly line is worth at least as much as a banker's thirty-seven hours behind a desk. The workman can say he helped build three hundred hydraulic presses or twenty-five trucks, but to his way of looking at it, the banker

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built nothing. There is no *visible* product coming out of the banker's effort.

This common sense approach, while honest, is incorrect. Yet it is played upon by the "social justice" promoters, despite the fact that they know that the banker's ability to pool and manage scarce resources (capital) creates products that are just as critical as those built by the assembly workers. The average bureaucrat or educator certainly uses that argument on his own behalf . . . "our product is ideas," they might say, or "we keep society running," or perhaps even "our product is the human mind." Yet, these products are just as intangible as the capital produced and managed by the banker, if not more so. The ingenuousness of the "social justice" concept begins to become apparent.

Yes, it is regrettable that there is far too little justice in the world, and that many people allow greed and envy to dominate their lives. Unfortunately, the "social justice" concept cannot bring justice. Justice must treat all people equally, regardless of their wealth or status. It is just as wrong to allow bias against the wealthy in the law as to allow bias against the poor. To allow either sort of bias is to eliminate *equal access,* and to deny *equal treatment.* This is the basic, inherent contradiction in "social justice": it is not true justice at all.

Governments created by men, and composed of men, cannot miraculously legislate justice or equality due to the contradiction involved in allowing governments to steal from some men to enrich others, but calling such action by private individuals criminal. Attempting to create equality through such injustice will lead to both economic collapse and to despotism. Ultimately, greed and envy may be undesirable traits, but the free market system turns them to society's benefit in most cases. "Social justice," on the other hand, will only benefit the small minority who will gain ultimate power to decide what is "just." ⊕

Justice and Freedom

IDEAS ON LIBERTY

JUSTICE is the only foundation upon which a society of free and independent people can exist. Justice is a concrete, recognizable, and objective principle. It is not a matter of opinion.

In our day and age the word justice is rarely used in political and economic discussions. The entire reason for the existence of communities, laws, governments and court systems has been forgotten. But if life and property are to be protected and secured, which is the purpose of society, then justice *must* be the rule.

LESLIE SNYDER

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Charles R. La Dow

If We Want Reindustrialization

WHEN a person with the accomplishments of Felix G. Rohatyn calls for a reborn Reconstruction Finance Corporation, we are at least required to take note of his argument. A senior partner in Lazard Freres & Company, who has chaired New York City's Municipal Assistance Corporation for eight years, Mr. Rohatyn is not only given large credit for saving the city from financial disaster; also his thoughts suggest how leading investment bankers may be thinking. For that matter, his point of view probably reflects that of the financial and business establishment at large. In an interview, in the January 30, 1984, *Forbes*, entitled "A Case for Reindustrialization," Rohatyn set forth his views.

Anyone interested in learning the details of the interview may read them in *Forbes;* but it is not necessary to delineate them here in order to meditate upon the very different roles, attitudes, and virtues required of good business as compared to good government. Although the successful businessman must possess foresight, his most important need is to deal with the realities of the here and now.

On the other hand, the statesman as a policy maker is measured by distant effect of today's decisions, while he may often be allowed to ignore today's disaster. This difference is recognized by terms of office vouchsafed to elected government officials, assuring them more time to achieve results. In our government, we can see, for example, that the House of Representatives, due to biennial elections, is more vulnerable to immediate pressures than the longer-termed President and Senate. Having the shakiest tenure of

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all, corporate executives are most tied to immediate results.

This observation brings into question the assumption that government will be better now that more businessmen are directing it than during heydays of the academics more favored by Democrats. Liberal academics have long been addicted to an ameliorative approach to society. This view, eventuating in the welfare state, is made to order for excellent business executives, like Felix Rohatyn, whose forte is untieing knotty situations by the efficient use of money. While Rohatyn is aligned with Senator Edward Kennedy, there are undoubtedly numbers of Republican businessmen who would go with Senator Robert Dole in resisting any dismantling of the welfare state. Not only does the remodelling of society offer even greater challenges than corporation-building; but the temptations of sovereign power and the opportunities in market insight and juggling must be close to overwhelming.

The trouble with Mr. Rohatyn's formula is that it will not achieve the end he hopes for: reindustrialization. It did not work in the 1930s and will not work now. Only World War II succeeded in revitalizing U.S. industry then and Rohatyn does not suggest, nor would he dare, a similar bailout for his revitalized R.F.C. Pumping public funds into business is a proven recipe for such eventual stagnation as we have lately experienced, even making due allowance for the miracles of computerism and robotry. Accurate circuitry cannot overcome the intelligence—and ambiguity—of human nature. To play on James Thurber's wit, "The germs are more astute than the police." As Fred Allen said, "The world is moving too fast for the Moses model man"; but he has his ways of slowing it down.

Pump money into business and the workers will busy themselves in pumping it out, while the distributory bureaucracy takes its cut off the top. This breeds "price inflation," adding to the costs of doing business. Meanwhile, escalating Federal debt, with this and all the other programs and commissions, push us into fiat money inflation exacerbating the original effect beyond rational prediction. Our business barometer, the stock market, flutters with uncertainty at each flip in interest rates.

Sound Money, Free Market

If we want reindustrialization, we must ask what brought industrialization in the first place. The answer is plain enough. The Industrial Age was ushered in by sound money and a free market. In our guilt over affluence, we tend to forget how awful conditions were before industrialization. Centuries saw direst need, while today's poor thrive compared

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to their counterparts even so recently as 1920. Even then, we were already putting the brakes on capitalism—a process which has proceeded with increasing urgency ever since.

Under such difficulties, only the inventiveness, skill, and wisdom of the private sector has managed to create increasing wealth. At that, until the "computer revolution," we were trapped in a state of "stagflation." We dare not count on such technological breakthroughs to save us. If we want reindustrialization, the heavy hand of government must be removed from the economy.

Commendable though it is for President Reagan to have commissioned J. Peter Grace to head a group to bring businesslike standards to the Federal bureaucracy, the effect can be no more than a poultice on the disease when surgery is called for. When a business is bankrupt, it is either a target for takeover, or must go out of business. Government, being a court of last resort, cannot be taken over—save by another government. We do not want that to happen. Therefore, a good many Federal agencies must go out of business. That is a moral, as well as a simple economic, truth. They have not only run us into unmanageable debt, but have also stretched the meaning of our Constitution beyond tolerable bounds. Beyond that, in the aggregate they have created an economic atmosphere in which our industries are in disarray and basic ones are losing out to foreign competition, or are pushed into foreign operations.

Lobbying for Favors

In a free market, expectations tend toward equilibrium with possibilities as individuals and firms set their standards and goals in light of their own peculiar strengths and handicaps. To the extent the welfare state enters into the scheme of things, persons are encouraged to ignore this wisdom and see the state as guarantor of their hopes and expectations. This provides an undeterminable multiplier effect on aspirations, which, today, is evidenced in intense lobbying, and even violence, rather than in productive efforts. To all concerned, business, labor, and the consumer, this state of affairs is cruel and immoral by any standard—regardless of constitutional issues.

Since government has nothing to draw resources from other than the economy, state support of its citizens' expectations has the end result of trading dreams for goods. Recognizing it or not, we have found that Albert Jay Nock was right decades back when he said: "No state on earth can afford to support all its idle people." A treasury debt of better than a trillion dollars is the proof of that.

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There is wringing of hands on all sides concerning the debt and escalating budget deficits; but, although the "war on poverty" appears to have reached stalemate, we are now faced with indefinable claims of equality with respect to race, sex, and whatever else may come to mind. Also replacing handouts are efforts so absurd as to call for a pristine environment, an absolute safety standard, and salvation for all endangered species. Noble ideals for sure; but out of accord with both the vagaries of human nature and mother nature, herself.

Perhaps this observation was best epitomized by a newspaper comic strip, "The Wizard of Id." Sir Rodney was delivering an ultimatum of the little king. He said that the king had ordered removal of all pollutants from the land, the sea, and the air. A peasant spoke up, asking: "Where do they come from?" (He must have been related to the little boy in the fable, *"The Emperor's New Clothes."*) Whatever may be said for these latest goals of the welfare state, they add an immeasurable cost and handicap to our industries in the frivolous way in which resultant regulations are made and applied. By and large they have been anti-reindustrialization in effect.

Nor is it probable that cost-benefit analysis could bring the bureaucracy into workable relation to the economy. Such power, however moderated, is inimical to the liberties proclaimed in the Ninth and Tenth Amendments. Although they may be unaware of it due to massive indoctrination, our people, like any others for that matter, are imbued with a necessity for personal independence. Although not immune to temptation to use political power for their own benefit, they are immensely resentful when it is applied to them individually. In playing up to that temptation, our politicians have so far been able to survive the resentment.

The Fading Dream

Since capitalism, disregarding the demonology of Marxism, has catapulted most of us into the middle class, where is that proletariat which assures them of continuing support in socialization? The dream is fading and the bills are coming due. Coercion is more palpable than the benefits in today's welfare state. While it is in the nature of things that a large vested interest will support any *status quo,* and that most of us may accept the intolerable rather than upsetting change, it is still true that there was an American revolution a little over two centuries (three lifetimes) ago.

We are fortunate that we need go no farther than the purposes of that revolution to find our bearings toward resolving current difficulties.

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Hearken to the Declaration of Independence enumerating the outrages of King George III: "He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance . . . He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended legislation. . . For taking away our charters, abolishing our most valuable laws, and altering fundamentally the Forms of our Governments." Items deleted in this series of charges do not here apply.

However, most especially in the last four decades, the government with which we replaced George III has progressively erected a multitude of new offices and sent forth swarms of officers to harass and eat out the substance of our people. The accompanying regulations and administrative law have surely subjected us to jurisdictions foreign to our Constitution, whose "pretended legislation" often runs even beyond any mandate of our supine elected officials. It is notorious that the bureaucracy is now largely beyond the control of President, or Congress, composing so many "independent agencies." As for taking away our charters, the Federal leviathan has largely emasculated state and local government, all but abolishing the highest law on division of power.

Continuous Turmoil

If the basic reasons for our withdrawal to independence as a nation were not enough, there stands our "highest law," the Constitution of the United States of America. No rational feat of legal legerdemain can construe that document as justifying the vast interventions into matters that were once truly civil rights. It is generally agreed that such were not the intentions of the Founders, but is widely assumed that this was changed by the Civil War Amendments (13th, 14th, and 15th). Not only did congressional debates leading to the formulation of those amendments fail to support such an assumption; but down to the beginning of these troublous times legal opinion held stoutly otherwise. It was generally understood that the meaning of a law was to be found in the intentions of its promulgators and ratifiers. Changes in such meanings must be made in clearcut definition and by due process. As it now stands, such changes may be made by passing court decisions. Civil rights historically have been understood by their classical definition as "the non-political rights of citizens." They are now thoroughly politicized, having become public property. The outcome: continuous turmoil.

There exists no constitutional mandate for managing the economy, unless one chooses to stretch the

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"elastic clause," or the "promote the general welfare" in the Preamble beyond the bounds of imagination. The government could promote the general welfare by ensuring a sound money, assuring free interstate commerce, properly handling public lands, judiciously managing foreign affairs including war responsibilities, and wisely using police powers incident to such duties, while guarding civil rights as reflected in the Bill of Rights. Such were the obvious intent in the general welfare phrase and that "necessary and proper" in the elastic clause. To pretend otherwise is, in the words of Chief Justice John Marshall, to extend a power "in itself illimitable."

Nothing exists in later amendments which could be legitimately construed to replace original limitations of power. Any state was free, within its boundaries, to prohibit intoxicating drinks—as Kansas first did—promote sexual equality and universal suffrage, regulate intrastate commerce and personal behavior within the limits imposed by the Bill of Rights. Chattel slavery, like indentured servitude, was soon to be doomed by industrialization, including that of agriculture; but, in any event, with the 13th Amendment in place, the Bill of Rights provided all necessary authority for the Federal protection of civil rights.

As for discipline of the states, the American people have proved themselves fabulously capable of that by "voting with their feet" (or other transportation) in moving their business and persons to what they themselves considered the most favorable environments—and that without the least bit of Federal support or coercion. Perhaps the most obvious evidence of this has been the dispersal of our Black population throughout the country although it applies to all of our races and classes. And New York City has long been the Mecca of liberated women. According to personal limitations, each of us may be counted on to pursue his own welfare. Limitations are ineluctable.

The Vanishing Frontier?

Still, one must deal with the ultimate fatuity that Federal interventionism has become necessary: that the vanishing of the physical frontier and complexities of industrialization demand centralized control. First of all, we have not conquered the frontier, but have leaped over most of it. One can drive for hours through much of the United States without encountering anything but competing traffic, or perhaps wild animals. Even if we choose not to privatize it, honesty requires us to admit that most of our land remains undeveloped by any standard of modern industrialism.

As for complexity, the answer to that is simplification and decentral-

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ization. To use the economists' words, economies of scale demand decentralization. Large enterprises, in order to survive, must break up their operations. Even more obviously, 50 disparate states, with their widely variant resources and activities, are beyond rational centralized control from Washington, D.C. Even to feel required to point this out seems, itself, to be an absurdity. In this light, the original blueprint of the Constitution appears to be ever so much more apposite to the current situation than when it was first struck off.

While adherence to oaths is taken more lightly in these days of easy divorce and overlooked treason, they still possess considerable force in a court of law. The constitutional oath is a case in point. Every public officer in the United States, down to the local public school teacher, is required to take that oath to "protect and defend the Constitution of the United States." No intellectual fad, including that which passes as liberalism, or socialism, has a warranty of permanence. Now that its promises have been proved to be illusory, with tyranny and terrorism rife in much of the world, a new respect for that oath may appear.

If those who swear take the trouble to study more carefully that splendidly brief, simple, but profound document—free of small print—we should be on the way toward that reindustrialization so devoutly hoped for by most of us, as well as by Felix Rohatyn. It will not happen until we truly turn to those principles which nurtured this industrial giant in the first place, but have since been eroded away by fraternal strife, misunderstanding, and corruption. It is high time for a new birth of liberty.

Reprints . . . A Page on Freedom

Each of these brief messages is a handy way to share with friends, teachers, editors, clergymen and others a thought-starter on liberty. It also serves to introduce the reader to our work at FEE.

See page 387 for this month's *Page on Freedom.* (Copies of previous messages are also available; specify title when ordering.) Small quantities, no charge; 100 or more, 5 cents each. Or, feel free to reprint the message in your own format if you'd prefer.

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Tyranny of the Status Quo

THE FRIEDMANS, Milton and Rose, have jumped the boundaries of economics in their *Tyranny of the Status Quo* (New York: Harcourt Brace Jovanovich, 182 pp., $10.95) to make a generalized study of the way democracy works to stymie legislative innovators whether they be libertarian, socialist or mixed-breed partisans of the Middle Way. But if this is primarily a work in political science, it manages nonetheless to keep up a steady drumbeat for the Friedmans' own economic program. Their hopeful assumption is that the American people will some day insist on returning to their ancestral ways of freedom despite the special interests that continue to frustrate them.

Briefly, the Friedmans argue that if a newly elected leader in a democracy can't put his or her program into operation within six to eight months after taking office, the supposed "mandate" will vanish. This is what happened to Ronald Reagan in the United States and to Margaret Thatcher in England. Reagan and Thatcher had similar conservative agenda, but the "law" of democracy pays little attention to questions of "right" and "left" when it comes to preserving the status quo. Mitterrand of France is a socialist, but he ran into the same roadblocks as Reagan and Thatcher in his efforts to change the French economy.

The Friedmans speak of an "Iron Triangle" that inevitably forms to preserve or extend the special privileges that status quo beneficiaries have already nailed down. A special interest group with a strong lobby will zero in on the politicians, with the help of bureaucrats whose jobs are connected with special interest dispensations. The special interest group may not be numerically important, but it has a strong incentive to get what it wants. Meanwhile the many who have very little money at stake in a particular instance won't bother to fight. The "Iron Triangle" of the special interest lobby, the bureaucrats, and the politicians who are afraid to trifle with the status quo, will carry the day.

The Friedmans quote Congress-

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man Phil Gramm to buttress their theory. "Every time you vote on every issue," says Gramm, "all the people who want the program are looking over your right shoulder and nobody's looking over your left shoulder. They're sending letters back home telling people whether Phil Gramm cares about the old, the poor, the sick, the bicycle riders . . . the list goes on. It's perfectly legitimate. The problem is that nobody's looking over the left shoulder."

Since our Congressmen aren't chosen to represent all the people, that job is left to the President and the Vice President, who do have a national mandate. But if a new administration can't establish a "hundred days" climate in Washington on first taking office, it will succumb to the status quo tyrants.

Achievements of the Reagan Administration

The Friedmans give Reagan good marks for his first year in the White House. With Congressman Jack Kemp at his elbow Reagan managed to reduce tax rates by 25 per cent over a three-year period. He provided for indexing taxes in 1985 to banish inflationary bracket creep. He cut the top income tax rate from 70 to 50 per cent. And he did manage to reduce the rate of public spending increases.

This was the extent of the Reagan honeymoon. In 1982 there was a legislated rise in "peripheral" taxes. The Social Security tax went up. There was a gas tax. The fight to lower the costs of regulation slowed. The Friedmans observed that government spending "continued to rise as a fraction of income even after allowing for the expenditures associated with recession."

The Friedmans credit Reagan with a victory over inflation, but think the Federal Reserve Bank might have used its control over the money supply without provoking some barbarous swings that deepened recession by putting people out of work. Now that the bad days are in the past, however, the Friedmans are hoping a Reagan victory at the polls next November will be sufficiently impressive to breathe new life into the Reagan "revolution."

A Program for Action

If Reagan does get a new mandate, the Friedmans are ready with a promising program for action. They are hoping that a Constitutional Amendment requiring a balanced budget will pass. A flat tax, set at around 17 per cent, would raise all the money needed to keep the budget in balance and still allow for a military program strong enough to deter the Russians. The Friedmans' flat tax would provide for personal allowances that would exempt the poorest people from hardship, but it would deny the host

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of special deductions that have made the current "progressive" tax forms almost impossible for lay people to understand. The Friedmans think the "rich" would gladly give up recourse to their fancy tax shelters in favor of simplicity at a low fixed rate.

The Friedmans want to see the balanced budget requirement made part of the Constitution in order to give to timorous politicians an excuse for deserting their particular corner in the Iron Triangle. The other two occupants of corners in the Triangle—the special interests and the bureaucrats—could hardly expect legislators to flout a law that would require "package" treatment of the budget as a whole. As an additional safeguard the Friedmans also advocate giving the President an item veto.

The Friedmans part company with Jack Kemp, Lewis Lehrman, Ron Paul and others on the subject of returning to the gold standard. It would have to be international, they say, and most foreign nations are in no position to put their currencies at the mercy of runs on their treasuries. Better, so the Friedmans say, to require the federal government to keep the increase in the quantity of money it issues to a low fixed rate that will not vary widely from year to year.

To my mind, the trouble with relying on political appointees to make a judgment of how much money is necessary to sustain a proper rate of growth is that it could always be second-guessed. With robotics and the silicon chip playing new roles in the business of making new productivity records, how do we know that a three or four per cent increase in the money supply each year is enough? The virtue of a gold standard is that it would take decisions out of the hands of the politicians. One can agree with the Friedmans that a return to gold is not likely in the near future. But why foreclose discussion of the problem?

THE RAILROADERS
by Stuart Leuthner
(Random House, Inc., 201 East 50th Street, New York, N.Y. 10022) 1983
152 pages ▪ $19.95

Reviewed by Robert M. Thornton

THIS is not just another nostalgic book about railroads. You can find many books beautifully illustrated with gorgeous steam engines, but scant attention is paid to those who kept them running. The author has done for old-time railroaders what Lawrence Ritter did for old-time baseball players twenty years ago in

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his *The Glory of Their Times*. For a dozen years Leuthner has traveled over the country interviewing all sorts of railroaders (including women), some of whom went to work early in this century. We hear the stories of engineers, firemen, conductors, porters, freight agents, brakemen, executives, stewards, chefs, mechanics, machinists, red caps, baggage masters, station masters and railway mail clerks.

One day a few months ago I was putting together some notes and clippings on railroads and suddenly realized that while my father, my step-father and two fathers-in-law worked on the railroads (three of them all their working careers), none of my four children (youngest age 20) has ever ridden on a railroad! Here in a sentence is the sad story of American railroads. (While the persons interviewed in this book observed the decline of railroads in this country, none of them appeared to have understood why it happened—they were, I guess, too close to the forest to see the trees. To understand this decline, read Clarence Carson's *Throttling the Railroads* or Albro Martin's *Enterprise Denied*. These books document the government regulations that dealt great harm to the railroads, beginning about the turn of the century.)

This book celebrates the men and women who loved working on the railroads, who looked forward to going to work each day, as did my relatives. Now remember how it was on the railroads years ago—long hours, dirty and dangerous work. Yet these persons enjoyed the challenge of the job and took pride in doing it well.

All of these men and women share an appreciation of competence. Like men of the Old West, they were not so concerned with parentage and background as with whether you could do the job. Therefore, they had little patience with "college boy" bosses who might have a lot of book knowledge but who were sadly lacking in practical experience.

The whole tone of this book is lighthearted but the underlying theme is a very serious one. With few exceptions, everyone interviewed in this book hated to see steam engines replaced by diesels. All agreed the diesels were more economical, safer and easier to operate—but the men hated to see steam go, not out of sentiment, but because all the skills they had mastered over the years were suddenly obsolete. Running a diesel was a piece of cake and hence no challenge. But running a steam engine efficiently and safely was a very demanding job, and there was pride in doing it well. We don't wish to go back to "the good old days," even if we could, but we need to keep in mind that not even progress is without cost.

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IDEAS HAVE CONSEQUENCES

Any idea becomes our own as we are exposed to it and accept it and practice it and can explain it to friends—all done without coercion.

This pretty well describes the activities of FEE—seeking, practicing, sharing ideas on liberty, that liberty which Lord Acton identified as "the assurance that every man shall be protected in doing what he believes his duty against the influence of authority and majorities, custom and opinion." If you'd care to join in pursuit of such ideas and ideals, just use the form below to reserve your place on **The Freeman** mailing list.

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